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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. [redacted] 59

A. J. SIMLER,
Petitioner,

VERSUS

LESLIE L. CONNER,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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December, 1961.

UTTERBACK TYPESETTING CO. 10 SO WALKER, OKLAHOMA CITY. PH. CR 9-8750

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In the
Supreme Court of the United States
OCTOBER TERM, 1961

No. .....

A. J. SIMLER,
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LESLIE L. CONNER,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Comes now the above named petitioner and hereby petitions this Honorable Court to grant a writ of certiorari herein and review the opinion of the United States Court of Appeals for the Tenth Circuit, which opinion was rendered on October 12, 1961, and was rendered on reconsideration after direction by this Court to reconsider its former opinion. The first opinion rendered by the Court of Appeals for the Tenth Circuit in regard to the matters involved herein is found in 282 F.2d 382. Thereafter, this Court granted certiorari in said cause on petition for rehearing and rendered the following opinion:

"IN THE SUPREME COURT OF THE UNITED STATES

"OCTOBER TERM, 1960

"No. 685

"Leslie L. Conner, Petitioner,

v.

"A. J. Simler, Respondent.

"The petition for rehearing is granted. The order entered March 20, 1961, denying the petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted. The judgment is vacated and the case is remanded to the Court of Appeals for reconsideration in the light of Southard v. MacDonald, 360 P.2d 940.

"THE CHIEF JUSTICE, MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS dissent from vacation of the Court of Appeals judgment which held that the respondent Simler was entitled to have the facts of his case in the United States District Court determined by a jury as we believe is required by Rule 38 of the Federal Rules of Civil Procedure, our prior decisions and the Seventh Amendment to the Constitution of the United States."

On reconsideration as therein directed, the opinion of the Circuit Court of Appeals in effect denied to the petitioner herein a jury trial, and said opinion being rendered on October 12, 1961 by the Court of Appeals is as follows:

"When we originally considered this declaratory judgment action in which determinations of the validity of an attorney's contingent fee contract and of the reasonableness of an attorney's fee in a will-contest

case are sought, we held that the plaintiff was entitled to a jury trial on the issues of fact. Simler v. Conner, 282 F.2d 382. Thereafter the United States Supreme Court vacated our judgment and remanded the case 'for consideration in the light of Southard v. MacDonald, 360 P.2d 940.' Conner v. Simler, 367 U.S. 486. In the Southard case the Supreme Court of Oklahoma held:

> 'Where it is necessary to cancel a contingent fee contract before any other relief prayed for can be granted, and the cancellation of such contract is the basic relief sought, neither party is entitled to a jury trial for the reason that the cancellation is a purely equitable matter.' Southard v. MacDonald, Okl. , 360 P.2d 940, 941 (syllabus by the court).

"Unless the contingent fee contract in this case is held to be invalid the value of the services on a quantum meruit basis does not arise, and Conner is entitled to one-half of any recovery resulting from the legal services rendered in connection with the will contest matter. The basic relief sought is the cancellation of the contract; therefore the action is purely equitable in nature, and should be determined by the court without a jury.

"As to the appropriateness of the trial court's summary judgment our views remain as expressed in the former opinion.

"REVERSED and REMANDED for trial without a jury.

"LEWIS, Circuit Judge, concurring.

"I concur. The Supreme Court of the United States in remanding this case for further consideration in the light of Southard v. MacDonald, 360 P.2d 940 makes it manifest that the issues are dependent upon the application of state law. And the opinion of the

Supreme Court of Oklahoma in Southard indicates that there is no factual element of reasonableness necessarily inherent in the searching scrutiny required in determining the validity of a contingent fee contract made between attorney and client as authorized by Title 5, O.S.A. Sec. 7. I interpret Southard as negativing the earlier language contained in Haunstein v. McAllister, 46 P.2d 552, wherein it was stated that an attorney, having entered into a contingent fee contract with his client, shown to be free from fraud, still 'is not entitled to recover more than reasonable compensation for his services, *regardless of the contract price.*" (Emphasis added.) In Southard it is said, 360 P.2d 940 at 945-6: 'Since we hold that the deed and contract are binding, there is no necessity to discuss the value of the service on quantum meruit.' And it follows, as stated in the main opinion, that the issue of the validity of the contract is one for the court to determine and under applicable state law. It also follows, since the trial court has summarily determined that the subject contract is valid and binding, that our present holding must search the correctness of that holding.

"The trial court rendered summary judgment after reading the depositions of the plaintiff, defendant and a third person present when the questioned contract was executed. The testimony therein contained shows a substantial agreement of the witnesses as to the circumstances preceding and attending the execution of the contract. Agreement upon these circumstances, however, does not preclude the finding of varying but permissible inferences from those circumstances. To find an ultimate fact by this method is trial by affidavit and not proper under Rule 56. I agree that the case should be remanded for trial before the court."

After the rendition of said opinion, the petitioner herein filed petition for rehearing which was denied by the Court of Appeals on November 18, 1961.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

Should the question of right to trial by jury be determined by the Federal Rules of Civil Procedure and the Laws and Constitution of the United States in a diversity case, or should such right be determined by the law of the State in which the case is being tried?

It will be noted from the first opinion of the Tenth Circuit, 282 F.2d 382, that the Tenth Circuit held that this case should be tried to a jury. The appellee, Leslie L. Conner, filed a petition for certiorari in this Court, which was denied, and on petition for rehearing this Court directed the Court of Appeals to reconsider its opinion in the light of *Southard* v. *MacDonald*, 360 P.2d 940. On reconsideration thereof, the Circuit Court held that in view of *Southard* v. *MacDonald*, *supra*, from the Oklahoma Supreme Court that the petitioner here, appellant in the Circuit Court, was not entitled to a jury trial. Thus, we present to this Court the question as to whether or not federal law or state law should be considered in determining whether or not a litigant in a diversity case is entitled to a jury trial. We feel that in a case in the United States Court under the Constitution of the United States, it is mandatory that a jury trial be granted in accordance with the Constitution of the United States and

that the state law does not control in determining such question.

For emphasis sake we quote the Seventh Amendment as follows:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined, in any Court of the United States, than according to the rules of the common law."

Rule 38 of the Rules of Civil Procedure is as follows:

> "(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.
>
> "(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party.
>
> "(c) Same: Specification of Issue. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.
>
> "(d) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5 (d) constitutes a waiver by him

of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties."

Petitioner calls to the attention of this Court the following cases:

In the case of *Allen* v. *Matson Navigation Company*, 255 F.2d 273, the Ninth Circuit, in Syllabus 10, said:

> "The kind of jury trial to which parties are entitled in federal courts under federal rules is that preserved by Seventh Amendment, to which doctrine of Erie v. Tompkins is subservient. Fed. Rules Civil Procedure rules 38, 39, 28 USCA; U.S.C.A. Const. Amend. 7."

We also quote from the body of the opinion as follows:

> "We also note that while circumstances would not in our opinion alter results here, yet the sufficiency of certain evidence to raise a question of fact for jury should not be controlled by state law. 5 Moore's Fed. Practice 2d Edition Article 38.10 page 102."

See also to the same effect *Pogue* v. *Great Atlantic & Pacific Tea Company*, 5 Cir., 242 F.2d 575, 582; *Wright* v. *Paramount-Richards Theatres*, 5 Cir., 198 F.2d 303, 305; *Reuter* v. *Eastern Air Lines*, 5 Cir., 226 F.2d 443, 445; *Reynolds* v. *Pegler*, 2 Cir., 223 F.2d 429, 433, 434. An examination of these cases, we think will convince the Court that these circuits are convinced that state law has nothing to do with determining right of trial by jury or kind of jury trial to which a litigant is entitled.

In the case of *Dick* v. *New York Life Insurance Company*, 79 Sup. Ct. 921, the Supreme Court said:

"A Decision as to which standard should be applied can well be left to another case which question is briefed and argued."

In the case of *Wright* v. *Paramount-Richards Theatres*, cited *supra*, the Fifth Circuit in Syllabus 1 said:

"While federal Court of Appeals, as well as federal District court for Louisiana district, is just another tribunal for interpreting and applying substantive law of Louisiana in personal injury actions of which such courts have jurisdiction solely because of diversity of parties' citizenship, federal courts are bound by federal constitutional amendment guaranteeing jury trial and providing that no fact tried by jury shall be re-examined in federal court otherwise than according to common law rules, which are not recognized by Louisiana, under civil law of which appellate court gives judgment on facts without jury's intervention. U.S.C.A. Const. Amend. 7."

In *Pogue* v. *Great Atlantic and Pacific Tea Company*, 242 F.2d 575, the Fifth Circuit in Syllabus 4 said:

"The kind of jury trial to which parties to a Florida negligence action tried in a federal court were entitled under rules of civil procedure was that preserved by Seventh Amendment to the Constitution. Fed. Rules Civ. Proc. rules 38, 39, 28 U.S.C.A., U.S.C.A. Const. Amend. 7."

In the case of *Bowie* v. *Sorrell*, 209 F.2d 49, the Court said in Syllabi 3 and 4 as follows:

"(3). Where separate trial was ordered on issue of validity of release pleaded by defendant as defense to tort action and attacked by plaintiff as being invalid because of fraud, plaintiff was entitled to jury

trial on such issue. Fed. Rules Civ. Proc. rule 42 (b), 28 U.S.C.A.

"(4). Question whether Plaintiff in tort action was entitled to jury trial in separate trial on issue of validity of release relied upon by defendant and attacked by plaintiff as being invalid because of fraud would be determined by federal law, not by state law. Fed. Rules Civ. Proc. rule 42 (b), 28 U.S.C.A."

In the case of *Order of United Commercial Travelers of America* v. *Duncan* (C.A. 6th, 1955), 221 F.2d 703, the Court states:

"The Court did not err in submitting this question to the juries. It was a procedural question governed by the law of the forum. Restatement Conflict of Laws, Art. 585. The law of the forum determines whether an issue of fact shall be tried by the Court or by a jury. Restatement Conflict of Laws, Art. 594."

In *Beacon Theatres, Inc.* v. *The Hon. Harry C. Westover, Judge of the United States District Court of the Southern District of California*, 79 Sup. Ct. 948, 359 U.S. 500, the Court held in Syllabus 4 as follows:

"The Declaratory Judgment Act preserves right to jury trial for both parties. 28 U.S.C.A., Secs. 2201, 2202."

and in Syllabus 22 as follows:

"In federal courts, right to jury trial cannot be dispensed with, except by consent of parties entitled to it; nor can it be impaired by any blending with a claim, properly cognizable at law, of demand for equitable relief in aid of legal action, or during its pendency. Fed. Rules Civ. Proc. rules 1, 2, 18, 39 (a), 28 U.S.C.A.; 28 U.S.C.A., Sec. 2072; U.S.C.A., Const. Amend. 7."

In the case of *Jackson D. Magenau, Administrator v. Aetna Freight Lines, Inc.*, 79 Sup. Ct. Rep., page 1184, 360 U.S. 308, Syllabi 3 and 4 are as follows:

"Under federal judicial system, determination of disputed questions of fact in civil common-law action is for jury.

"Where state practice rule requiring disputed factual issue to be tried to court is not an integral part of special relationship created by statute, federal court, in diversity case, should not follow state rule."

Petitioner calls attention to Rule 19, Supreme Court of the United States in part as follows:

"1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

* * * * * * *

"(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state of territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; * * *"

This petitioner shows to this Honorable Court that since there are differences of opinions and views among the courts of appeals in the construction and application of the Rules of Civil Procedure and the Federal Constitu-

tion, your petitioner is entitled to a determination by this Court of the question herein involved, namely, whether the right to a jury trial in a diversity case in a United States court should be determined by state or federal law. This Court has repeatedly held that where there is a conflict between different circuits in the United States construing a federal law or the Constitution of the United States, that in that event, this Court will grant certiorari and determine the question involved, and we call to this Court's attention the case of *Boehm* v. *Commissioner of Internal Revenue*, 326 U.S. 287, 291, 66 S. Ct. 120, 90 L. Ed. 78, wherein this Court used this language:

> "* * * We granted certiorari because of an alleged inconsistency with Smith v. Helvering, 78 U.S. App. D.C. 342, 141 F.2d 529. * * *"

In *Hercules Gasoline Co., Inc.* v. *Commissioner of Internal Revenue*, 326 U.S. 425, 66 S. Ct. 222, in the body of the opinion this Court said:

> "We granted certiorari, 326 U.S. 701, 66 S.Ct. 23, because of conflicting determinations by the Circuit Courts as to the scop f these credit provisions."

In *Commissioner of Internal Revenue* v. *Flowers*, 326 U.S. 465, 66 S. Ct. 250, we quote from the body of the opinion:

> "The Commissioner disallowed the deductions, which action was sustained by the Tax Court. But the Fifth Circuit Court of Appeals reversed the Tax Court's judgment, 148 F.2d 163, and we granted certiorari because of a conflict between the decision below and

that reached by the Fourth Circuit Court of Appeals in Barnhill v. Commissioner, 148 F.2d 913."

In the case of *Oklahoma Press Pub. Co. v. Walling, Adm'r; Wage and Hour Division, U. S. Department of Labor,* and *News Printing Co., Inc. v. Same,* 327 U.S. 186, 66 S. Ct. 494, we quote from the body of the opinion:

"Because of the importance of the issues for administration of the Act and also on account of the differences in the grounds for the two decisions, as well as between them and decisions from other circuits, certiorari was granted in both cases."

In Robertson & Kirkham, "Jurisdiction of the Supreme Court of the United States," 1951, the author states in Article 322, page 629:

"Where the decision of the Court of Appeals sought to be reviewed by certiorari directy conflicts, upon a question of federal law, with the decision of another Court of Appeals on the same question, the Supreme Court grants certiorari as of course; and irrespective of the importance of the question of law involved."

Thereunder are cited many cases, and on page 633 of the same authority and the same article, the author states further:

"Differences of view among the Courts of Appeals in the construction and application of federal statutes are regarded as requiring the interposition of the Supreme Court by certiorari under the direct conflict rule."

There are many cases cited hereunder, and under the Rules of this Court the petitioner shows that cetriorari should be

granted, and that there is a substantial federal and constitutional question involved herein, and by virtue of the conflict, your petitioner is entitled to a writ of certiorari, and upon the granting of certiorari and reviewing the cause, he is entitled to have the opinion of the United States Court of Appeals for the Tenth Circuit reversed insofar as it denies to your petitioner a jury trial, and is entitled to an order directing a jury trial be granted as provided by the Constitution of the United States and Rule 38 of the Federal Rules of Civil Procedure.

Your petitioner now shows to this Honorable Court that he has not presented to this Court herein a full statement of the factual situation or facts in this case by reason of the fact that the opinions set out in this petition and rendered by the Circuit Court set forth the controversy, but your petitioner wishes to call to the attention of this Court the fact that this is a suit wherein your petitioner sued the respondent in the United States District Court for the Western District of Oklahoma asking the court to determine by means of a declaratory judgment whether or not this petitioner owed the respondent any additional sums as attorney fees, and if he did owe additional sums as attorney fees to the respondent, then to determine the amount thereof, and that such controversy and the issues as made by the pleadings are shown herein by a copy of the following, namely, the original Complaint filed in April, 1958, the Amended Complaint filed on or about August 6, 1958, and a further Amendment filed on or about the 15th day of August, 1958, the Answer and Counter-claim of defendant Leslie L. Conner, omitting the exhibits filed on or about the

23rd day of September, 1958, the Reply to Counter-claim of defendant filed in said United States District Court on or about the 14th day of May, 1959, and your petitioner further shows that he attaches to this Petition an Appendix containing a true and correct copy of the pleadings set forth above which fully and completely show the issues involved and the pleadings of the parties omitting the exhibits in the United States District Court for the Western District of Oklahoma.

SECOND REASON FOR GRANTING THE WRIT

Questions Presented

The United States Court of Appeals, Tenth Circuit, in its opinion misconstrued the opinion of *Southard* v. *MacDonald*, 360 P.2d 940, and failed to make the distinction as to the facts therein set forth.

We wish to call to the Court's attention the fact that, under Oklahoma law the petitioner is entitled to a jury trial. In determining the difference in the factual situations it is necessary to fully understand that in the *Southard* v. *MacDonald* case the contract was entered into before the relationship of attorney and client existed. In the case of *Simler* v. *Conner*, the case at bar, the letter of September 25, 1952, was written by Mr. Conner, signed by Mr. Simler after the relationship of attorney and client existed. The relationship of attorney and client began on July 18, 1952, when Mr. Conner prepared a letter of employment and secured Mr. Simler's signature thereto and began to repre-

sent Mr. Simler. Consequently, on the 25th day of September, 1952, when the second letter, which is the letter involved in this litigation, was prepared by Mr. Conner and signed by Mr. Simler, Mr. Conner was Mr. Simler's lawyer and could not take any advantage of him, and the Supreme Court of Oklahoma has passed squarely and completely upon a similar question in the case of *Haunstein* v. *McAllister*, 172 Okla. 613, 46 P.2d beginning on page 552, and we quote:

> "It is a well established rule of law that contracts between attorney and client to the advantage of the attorney, made while such relation exists, are presumptively fraudulent, and the burden of proof is upon the attorney to show that such contracts are fair, just and equitable, and *EVEN THEN HE IS NOT ENTITLED TO RECOVER MORE THAN REASONABLE COMPENSATION FOR HIS SERVICES, REGARDLESS OF THE CONTRACT PRICE.*" (Emphasis supplied.)

This opinion was cited in *Southard* v. *MacDonald* with approval. Consequently, since the letter of September 25, 1952, was prepared by Mr. Conner and signed by Mr. Simler when the relationship of attorney and client existed, Mr. Conner is not entitled to recover more than reasonable compensation for his services, regardless of such letter, and your petitioner believes that the Court of Appeals for the Tenth Circuit has apparently assumed that the case of *Southard* v. *MacDonald* nullified or overruled *Haunstein* v. *McAllister*, *supra*, and therefore rendered an opinion which misconstrues the law of Oklahoma.

Your petitioner further shows to this Honorable Court that the Supreme Court of Oklahoma in the case of *Wolfe v. Campbell*, 107 Okla. 112, 230 Pac. 506, held that the "issue as to what is reasonable attorney's fee is for the jury."

Your petitioner shows to this Honorable Court that under the law of Oklahoma, before the relationship of attorney and client exists, an attorney may contract with his client on the same basis as any other contract, but after such relationship exists, an attorney cannot contract with his client for more than reasonable compensation, regardless of contract price, and the letter dated July 18, 1952, prepared by Mr. Conner and signed by Mr. Simler provides that Mr. Conner should be paid a reasonable fee for his services, and the petitioner is desirous of paying a reasonable fee, if he has not already paid a reasonable fee, and he is entitled to have such matter determined by a jury under the law of the State of Oklahoma as well as the Constitution of the United States and the Federal Rules of Civil Procedure, and the Constitution of the State of Oklahoma.

Your petitioner shows that Article I of the Constitution of Oklahoma provides as follows:

> "The State of Oklahoma is an inseparable part of the Federal Union, and the Constitution of the United States is the supreme law of the land."

Article II, Section 19, is in part as follows:

> "The right of trial by jury shall be and remain inviolate, and a jury for the trial of civil and criminal cases in courts of record, other than county courts, shall consist of twelve men; * * *."

CONCLUSION

WHEREFORE, your petitioner prays that certiorari be granted and that this cause be reversed, and that the United States Court of Appeals Tenth Circuit be ordered and directed to grant a jury trial, or that the United States District Court for the Western District of Oklahoma be ordered and directed to grant a jury trial to this petitioner.

Respectfully submitted,

JOHN B. OGDEN,
1408-9 Liberty Nat'l Bank Building,
Oklahoma City, Oklahoma,
Attorney for Appellant.

Of Counsel:
JACK M. HIGHLEY,
Mutual Savings Building,
Oklahoma City, Oklahoma,

December, 1961.

CERTIFICATE

I certify that I mailed a true and correct copy of this PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, to Leslie L. Conner, Hightower Building, Oklahoma City, Oklahoma, and to Phil Daugherty, Fidelity National Bank Building, Oklahoma City, Oklahoma, by depositing the same in the United States mail with sufficient postage attached on this the day of December, 1961.

.....

JOHN B. OGDEN

APPENDIX

APPENDIX I

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

A. J. Simler, Plaintiff, v. Leslie L. Conner, Defendant. No. 8008 Civil.

COMPLAINT

Comes now the above named plaintiff and shows to this Honorable Court:

1. That he is a resident, citizen and inhabitant of the State of Arkansas residing in North Little Rock, Arkansas. That the defendant herein is a resident, citizen and inhabitant of Oklahoma County, State of Oklahoma, and that there is in controversy herein a sum in excess of $3,000.00, and by virtue thereof, this Court has jurisdiction herein.

2. This plaintiff further shows that this is an action for a declaratory judgment pursuant to 28 U.S.C. Art. 2201 for the purpose of determining questions of actual controversy between the parties as hereinafter more fully appears.

3. This plaintiff shows to this Honorable Court that heretofore and on or about the day of July, 1952 this plaintiff herein employed the defendant, who is an attorney at law and who was at such time a duly licensed and practicing attorney, to represent this plaintiff in certain litigation in the contest of a will made by one, Birdine Fletcher, and in adjudicating the rights of this plaintiff in and to said estate, and that at such time this plaintiff and said defendant agreed that this plaintiff would pay to the said defendant a reasonable sum for his attorney's

fees in the handling of said matter for and on behalf of said plaintiff herein as his attorney.

4. That said attorney and this plaintiff conducted litigation concerning said matter through the Supreme Court of the State of Oklahoma on two different occasions and through the United States District Court at various times, with all of which the defendant is familiar, and in the United States Court of Appeals, Tenth Circuit, and the United States Supreme Court, and that said litigation has now been settled.

5. That the said defendant herein employed one, James E. Grigsby as an attorney to assist the said defendant and agreed to pay the said James E. Grigsby 28% of the attorney's fees which would be due to the said defendant as such attorney. That the said defendant, Leslie L. Conner, also employed Phil E. Daugherty, another attorney, to assist the said defendant in said litigation and agreed to pay said Phil E. Daugherty for his services out of such compensation as the defendant would be entitled to in said cause.

6. This plaintiff further shows to this Honorable Court that one, Arnold Britton, was associated with the said Leslie L. Conner in his office at such time and that the said Leslie L. Conner was liable to the said Arnold Britton, if anyone was liable to him, for any fees to which Arnold Britton would be entitled to, but this plaintiff shows that his contract of employment was with the said Leslie L. Conner.

7. This plaintiff shows that after said litigation had been carried on through the various courts, the said James E. Grigsby demanded an attorney's fee and filed suit in the United States District Court for the Western District of Oklahoma against this plaintiff and caused said property to be attached and oil runs withheld, and that this plaintiff was forced to and did employ John B. Ogden as his attorney to represent him in such matter and to represent

him in other matters connected with said estate and protecting the rights of this plaintiff.

8. This plaintiff shows to this Honorable Court that he has paid out the following amounts as attorneys fees:

(a) The sum of $46,000.00 to Fred Suits, Mary Weiss and the firm of Dudley, Dudley & Dudley, which sum was paid on order of the County Court of Oklahoma County, Oklahoma, such sum being paid to said attorneys for representing the executor of said estate of Birdine Fletcher, deceased, who was the sister of this plaintiff.

(b) That in addition thereto, he has paid to Leslie L. Conner the sum of $24,000.00.

(c) That he has paid to James E. Grigsby, one of the attorneys employed by the said Leslie L. Conner, the sum of $12,800.00.

(d) That he has paid to John B. Ogden, the attorney employed by this plaintiff, the sum of $7,500.00.

That he has paid a total of $90,300.00 for attorney's fees.

9. This plaintiff now shows to this Honorable Court that the defendant, Leslie L. Conner, is claiming against this plaintiff additional attorney's fees in excess of $3,000.00, and that this plaintiff is entitled to have this Court determine said controversy between this plaintiff and the said Leslie L. Conner, and determine whether or not the said Leslie L. Conner is entitled to any additional fees, and if so, what amount.

WHEREFORE, this plaintiff prays that this Court adjudge whether or not this plaintiff is indebted to the defendant in any sum or sums whatsoever, and if so, to what extent or what amount, for costs of this action, and for

such other and further relief as may appear to this Court just, right and proper in the premises.

JOHN B. OGDEN,
Attorney for Plaintiff,
1408-9 Liberty Bank Bldg.,
Oklahoma City, Oklahoma.

Demand for Jury Trial

Comes now the above named plaintiff and hereby demands and requests a jury trial of this cause. Dated this the day of April, 1958.

JOHN B. OGDEN,
Attorney for Plaintiff.

APPENDIX II

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

A. . Simler, Plaintiff, v. Leslie L. Conner, Defendant. No. 8008 Civil.

AMENDMENT TO COMPLAINT

Comes now the plaintiff and in compliance with the letter, direction and order of this Court dated August 1, 1958 wherein this Court stated:

"* * * defendant's motion for more definite statement is hereby sustained. Within 20 days the plaintiff should furnish the instruments requested by the defendant and attach them to the complaint."

The plaintiff herein hereby amends his complaint as follows:

1. This plaintiff shows to this Honorable Court that on or about July 18, 1952 the defendant was employed as alleged in paragraph 3 of the complaint, and that at said

time and as evidence of said employment Leslie L. Conner, the defendant herein, prepared in his office a letter dated July 18, 1952, which letter is in words and figures as follows, to-wit:

"Mr. Leslie L. Conner, Atty.,
410-414 Hightower Bldg.,
Oklahoma City, Oklahoma.

Dear Sir:—

Re: BIRDINE FLETCHER ESTATE
COUNTY COURT, OKLAHOMA
COUNTY, OKLAHOMA.

This confirms our employment of your self and law firm to represent us in the matter of the Estate of Birdine Fletcher, deceased, now pending in the County Court of Oklahoma County, Oklahoma, wherein certain people have filed petition to probate an alleged will supposed to be signed by her.

We agree to pay all the witness fees, court costs, furnish all bonds, purchase copy of all records from court reporters, prepare the evidence and pay all necessary bills to contest the admission of this will to probate because we do not believe it is a valid will. We understand that this will run in the approximate neighborhood of $1,000.00

We also agree to pay you and your firm a reasonable attorneys fee for the services rendered and to be rendered in this case in the County Court, and if necessary in the District Court and if necessary in the Supreme Court of the State of Oklahoma, which fee may be set by the County Court or any other court if the matter is successful either by trial or judgment or compromise.

If the matter is not, won, compromised or settled you are not to charge us a fee.

Yours truly,
/s/ A. J. Simler
A. J. Simler, for himself and his children."

That although the defendant Leslie L. Conner did not sign said letter he prepared the same and requested and directed the plaintiff herein to sign the same, thereby employing the said defendant as plaintiff's attorney and at that time the defendant Leslie L. Conner became and was the attorney of the plaintiff herein, A. J. Simler, and the relationship of attorney and client thereby and thereafter existed. That thereafter the said Leslie L. Conner did represent the said plaintiff in said matter therein referred to, and that the said Leslie L. Conner employed James E. Grigsby, the attorney mentioned in the complaint herein as pled in paragraph 5 of the original complaint, and also employed the said Phil E. Daugherty as heretofore pled.

2. This plaintiff shows to this Honorable Court that after said litigation had proceeded for some time and the said Leslie L. Conner was representing the plaintiff herein, that the plaintiff was called to the office of Leslie L. Conner, the defendant herein, and was there advised by the said Leslie L. Conner that the said Conner desired that the plaintiff herein sign another letter, and that the said Simler, plaintiff herein, refused to so do stating to the said Conner that he had already signed a letter of employment and that he did not wish to change the same in any manner whatsoever, but that the said Leslie L. Conner, defendant herein, told the said plaintiff it was necessary for him to sign another letter and insisted that the said A. J. Simler sign another letter which the said defendant herein, Conner, had prepared. That over the protest and objection and through the persuasion of the said defendant

herein, the said attorney persuaded, induced and procured the signature of the said A. J. Simler on said second letter, which was dated September 25, 1952, and which said letter was not signed by the said Conner but only by the said Simler, and for which there was absolutely no consideration of any kind whatsoever. Said letter last mentioned dated September 25, 1952 is in words and figures as follows, to-wit:

"Mr. Leslie L. Conner
Conner, Hilpirt & Britton
Attorneys and Counselors at Law
410-414 Hightower Building
Oklahoma City, Oklahoma

Dear Sir:—

With reference to my letter of July 18, 1952, employing your firm in the Fletcher Will and Estate Contest, I agree that the reasonable fee is:

25% of the amount recovered if settled without trial.
33⅓% of the amount recovered if the case is tried in County and District Court.

50% of the amount recovered if the case is appealed to the Supreme Court.

I understand that all expenses, taxes and costs are to be deducted first.

This is a contingent fee and if nothing is recovered, no fee is to be paid.

If anything is recovered or settled, I agree to pay you the above fees.

Yours truly,
s A. J. Simler
A. J. SIMLER"

This plaintiff shows that the same does not constitute a contract of employment for the reason that there was no

consideration whatsoever therefor, and for the further reason that the relationship of attorney and client existed between the plaintiff and the defendant and that the said plaintiff herein had no advice from anyone other than the said defendant herein, Leslie L. Conner, and that the said Leslie L. Conner then and there being and already having been employed as the attorney for the said plaintiff herein he did not have the right or authority to induce or procure another agreement or letter and that the same is and was utterly void, and that the same was procured by the said defendant herein by persuasion, coercion and on the advice of the said defendant herein, Leslie L. Conner, the attorney for A. J. Simler, and for the purpose of gaining or attempting to gain an unfair advantage over the said A. J. Simler. This plaintiff further shows to this Honorable Court that the said Conner did not permit the said A. J. Simler to seek outside counsel or advice and did not advise him of his rights with reference thereto, but insisted that he sign said letter before leaving the office of the said Leslie L. Conner.

3. That by virtue of all the above, the said second letter is absolutely void, of no force and effect and is not entitled to be considered in evidence or in any other manner in this Court, and this plaintiff shows that he is pleading the same and setting it out not for the purpose of being bound thereby, but solely because he was ordered and directed to so attach said letter or plead the same under and by virtue of the order of this Court, being a letter dated August 1, 1958, which letter is in words and figures as follows, to-wit:

"Although the plaintiff has alleged some matter which are not directly relevant, the court herein overrules the defendant's motion to strike, inasmuch as such irrelevant allegations will not work to the prejudice of the defendant.

"However, defendant's motion for more definite statement is hereby sustained. Within 20 days the plaintiff should furnish the instruments requested by the defendant and attach them to the complaint."

And that is the only reason he pleads or attaches a copy of said letter, and specifically pleading that he is not bound and was not bound thereby, and the same is absolutely void for the reasons hereinabove set forth.

4. This plaintiff further shows that under the laws of the State of Oklahoma the defendant Leslie L. Conner did not have the right to enter into a new contract with his client, the plaintiff herein, and that the said Leslie L. Conner did not have the right to change or modify the contract of employment in any manner whatsoever after he was employed by the said plaintiff A. J. Simler.

5. This plaintiff shows that under the circumstances hereinabove pled and shown, that the said letter dated September 25, 1952 was therefore secured by fraud and misrepresentation and for such reason is void.

WHEREFORE having fully complied with the Order of this Court in amending said complaint, the plaintiff prays that he have the relief set forth in his original complaint herein.

JOHN B. OGDEN
Attorney for Plaintiff
1408 Liberty Bank Building
Oklahoma City, Oklahoma

I certify that I mailed a true and correct copy of the Amendment to Complaint to Leslie L. Conner, Hightower Building, Oklahoma City, Oklahoma, on this the 6th day of August, 1958.

JOHN B. OGDEN

APPENDIX III

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

A. J. Simler, Plaintiff, v. Leslie L. Conner, Defendant. No. 8008 Civil.

AMENDMENT TO COMPLAINT

Comes now the plaintiff and in compliance with the Order of this Court entered on August 1, 1958, wherein the Court sustained the defendant's motion for more definite statement, this plaintiff in compliance with the Order of the Court hereby amends the complaint filed herein, and shows that on or about the 18th day of July, 1952 the defendant was employed as alleged in paragraph 3 of the complaint, and that at said time and as evidence of said employment, Leslie L. Conner, the defendant herein, prepared in his office a letter dated July 18, 1952, which letter is in words and figures as follows, to-wit:

"Mr. Leslie L. Conner, Atty.,
410-414 Hightower Bldg.,
Oklahoma City, Oklahoma.

Dear Sir:—

Re: Birdine Fletcher Estate
County Court, Oklahoma
County, Oklahoma

This confirms our employment of your self and law firm to represent us in the matter of the Estate of Birdine Fletcher, deceased, now pending in the County Court of Oklahoma County, Oklahoma, wherein certain people have filed petition to probate an alleged will supposed to be signed by her.

We agree to pay all the witness fees, court costs, furnish all bonds, purchase copy of all records from

court reporters: prepare the evidence and pay all necessary bills to contest the admission of this will to probate because we do not believe it is a valid will. We understand this will run in the approximate neighborhood of $1,000.00.

We also agree to pay you and your firm a reasonable attorneys fee for the services rendered and to be rendered in this case in the County Court, and if necessary in the District Court and if necessary in the Supreme Court of the State of Oklahoma, which fee may be set by the County Court or any other court if the matter is successful either by trial or judgment or compromise.

If the matter is not won, compromised or settled you are not to charge us a fee.

Yours truly,

/s/ A. J. Simler
A. J. Simler, for himself
and his children.

That although the defendant Leslie L. Conner did not sign said letter, he prepared the same and requested and directed the plaintiff herein to sign the same, thereby employing the said defendant as plaintiff's attorney and at that time the defendant Leslie L. Conner became and was the attorney of the plaintiff herein, A. J. Simler, and the relationship of attorney and client thereby and thereafter existed. That thereafter the said Leslie L. Conner did represent the said plaintiff in said matter therein referred to, and that the said Leslie L. Conner employed James E. Grigsby, the attorney mentioned in the complaint herein as pled in paragraph 5 of the original complaint, and also employed the said Phil E. Daugherty as heretofore pled.

WHEREFORE, plaintiff prays for judgment as in his original complaint set out herein.

JOHN B. OGDEN
Attorney for Plaintiff
1408-9 Liberty Bank Building
Oklahoma City, Oklahoma

I certify that I mailed a true and correct copy of this Amendment to Complaint to Leslie L. Conner, Hightower Building, Oklahoma City, Oklahoma, on this the 15th day of August, 1958.

JOHN B. OGDEN

APPENDIX IV

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

A. J. Simler, Plaintiff, v. Leslie L. Conner, Defendant. No. 8008 Civil.

ANSWER AND COUNTERCLAIM OF DEFENDANT LESLIE L. CONNER.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

A. J. Simler, Plaintiff, v. Leslie L. Conner, Defendant. No. 8008 Civil.

ANSWER AND COUNTERCLAIM

The defendant, Leslie L. Conner, for Answer to the Complaint and Amendment to the Complaint states:

—1—

The Complaint and Amendment fail to state a claim against Defendant upon which relief can be granted and Defendant moves the Court to dismiss the complaint.

—2—

Defendant admits the allegation in paragraph one of the Complaint.

—3—

Defendant denies the allegation contained in paragraph two of the Complaint.

—4—

As to paragraph three defendant admits that he is a lawyer, licensed to and has been admitted to practice of law for the past thirty-three years and is admitted to practice before the Supreme Court of the United States: The Court of Appeals: Tenth Circuit: The Supreme Court of the State of Oklahoma and all Federal District Courts in Oklahoma and other bureaus and commissions.

Defendant, Leslie L. Conner, admits that the plaintiff, Mr. A. J. Simler, employed him on a written contingent fee contract, when Mr. A. J. Simler had been *"left $1.00 and no more"* in a Will signed by his sister, Birdine Fletcher. That defendant accepted such employment on a contingent fee contract, copies of which are attached hereto as exhibits of Leslie L. Conner, defendant, and Counter-claimant.

That plaintiff and defendant on September 25, 1952, because of other proposed litigation agreed on clarification of the word "reasonable fee" in said contingent fee contract of July 15, 1952. The litigation was continuous and was carried through the County Court, District Court and Supreme Court of Oklahoma; the Federal Courts in Oklahoma; and through the Court of Appeals, Tenth Circuit; and was three times appealed to the Supreme Court of the United States. *During all this litigation plaintiff was represented by this defendant, Leslie L. Conner under his contingent fee agreement with plaintiff Mr. A. J. Simler,* to be his lawyer in all this litigation and has ended by defendant, Leslie L. Conner, winning for Mr. A. J. Simler,

the plaintiff, a 160-acre oil producing farm with all minerals and mineral rights located in the Cement Field and described as:

NW¼ of Section 34 in Township 6 North Range 10 West of the I. M. in Caddo County, Oklahoma.

which is producing oil at the rate of over $3,500.00 per month as the landowners' share.

—5—

Defendant admits the allegation contained in paragraph four of the Complaint and states in addition thereto that said litigation began in July, 1952 with the Contest of the Will and ended in 1957 when Mr. A. J. Simler, plaintiff, was paid over $65,635.09 in oil runs by W. H. Wilson, Executor of the Estate of Birdine Fletcher, deceased; which was recovered as a direct result of the legal services and judgments obtained in favor of M[r]. A. J. Simler, the plaintiff and against the representatives of his sister's estate.

—6—

As to paragraph five, defendant admits that he employed two other attorneys to assist him in said cause and that one of them was Mr. James E. Grigsby on a 16⅔% contingent fee contract, payable out of the fifty per cent contingent fee contract signed by Mr. A. J. Simler, plaintiff, herein, which was done with knowledge and the consent of the plaintiff and later that contract was increased by defendant, Leslie L. Conner, from 16⅔% to 28⅓% and after working two years in the litigation the said Mr. James E. Grigsby quit and did not complete his agreement with this defendant, but thereafter and in May, 1957, out of the "oil runs" the said plaintiff was reimbursed for this payment to James E. Grigsby. Defendant employed Phil E. Daugherty to assist him in the case on a contingent fee agreement payable out of defendant's, Leslie L. Conner, *fifty per cent contract* and he has worked continuously in the case with this defendant.

—7—

As to paragraph six, defendant admits that Mr. Arnold B. Britton was an employee in his office working for defendant on a salary and that the legal services he performed in the "Simler Cases," he performed as an employee of this defendant and he was paid for all his work therein prior to March, 1956, when he voluntarily left the employment of this defendant.

—8—

As to paragraph seven, defendant admits that James E. Grigsby filed suits in the District Court against Mr. A. J. Simler and this defendant, Leslie L. Conner, in an attempt to get his fee before the litigation was completed and that plaintiff, Mr. A. J. Simler, did settle with Mr. James E. Grigsby, *which settlement was made without the knowledge, consent or approval of this defendant.*

—9—

As to paragraph eight, defendant admits that plaintiff, Mr. A. J. Simler, after receiving over $65,639.09 as a direct result of over 5 years' legal work of his attorney this defendant, Leslie L. Conner, he paid to defendant, Leslie L. Conner, $24,000.00, all as per written agreements made between the parties, copies of which are attached hereto, out of which defendant paid amounts to other attorneys who assisted him and for additional cost that he had paid, which left a part of the above sum for a part of his services. Defendant denies all other allegations of the Complaint.

ANSWER TO AMENDMENT TO COMPLAINT

For answer to the Amendment to the Complaint defendant states:

—1—

Defendant admits that the parties entered into a contract of employment as therein alleged and thereafter defined and clarified the meaning of the word *"reasonable contingent fee,"* which was all agreeable and agreed to by Mr. A. J. Simler, this plaintiff and Leslie L. Conner, this defendant, that from July, 1952 to the time the case was won and the property and farm were recovered Leslie L. Conner, this defendant, was the lawyer for the plaintiff, Mr. A. J. Simler.

—2—

Defendant denies that A. J. Simler, the plaintiff, paid any sums to Mr. Fred Suits, Miss Mary Weiss, or Messrs. Dudley, Dudley and Dudley but alleges any sums so paid by Mr. W. H. Wilson, the duly appointed, qualified and acting Executor (who was appointed by Birdine Fletcher, sister of the plaintiff), of the Last Will and Testament of Birdine Fletcher, deceased, by County Court order in case No. 31726, as Estate expenses.

—3—

Leslie L. Conner, defendant, states that he has performed his contingent fee contract and he is demanding that Mr. A. J. Simler, the plaintiff, perform his agreement and transfer to this defendant one-half of all sums and things of value recovered for him in this five year litigation all as agreed in writing between plaintiff and defendant in 195_ when plaintiff had been given *"$1.00 and no more"* in the Will of Birdine Fletcher and he employed plaintiff to try to obtain back from the "legatee named therein" the amounts his sister had given them in her will. Defendant denies the other allegations in the Amendment to the Complaint.

WHEREFORE, Defendant Leslie L. Conner, having fully answered the Complaint and Amendment prays that

plaintiff Mr. A. J. Simler, take nothing by this action and that the Complaint be dismissed and he have the judgment and the relief prayed for in his Counterclaim.

COUNTERCLAIM OF DEFENDANT LESLIE L. CONNER

Leslie L. Conner, defendant, for cause of action in this Counterclaim against plaintiff, Mr. A. J. Simler, alleges and states:

—1—

Jurisdiction is founded on diversity of citizenship and amount. Plaintiff Mr. A. J. Simler is a citizen and resident of the State of Arkansas and defendant and Counterclaimant, Leslie L. Conner, is a citizen and resident of the State of Oklahoma and the amount in controversy exceeds the sum of Ten Thousand dollars exclusive of interest and costs.

—2—

That plaintiff employed defendant and Counterclaimant as his lawyer to represent him *in a contingent fee attorneys contract* on July 18, 1952, and later on September 15, 1952, plaintiff and defendant clarified the terms of that contingent fee contract by an agreement in writing providing for a scale of contingent fees to be paid defendant on the settling of the case, or trials or appeals thereof: That defendant and counterclaimant has performed his contract and plaintiff herein refuses to perform his agreement for division of the property recovered for him by this defendant and counterclaimant growing out of the litigation involving the following facts in the following cases and appeals, as shown by the allegation and the attached exhibits

—3—

That John W. Fletcher was the owner and in possession of the 160-acre farm and property described as NW¼ of Section 34 in Township 6 North, Range 10 West of the I. M. in Caddo County, Oklahoma. He had married Birdine Simler, who was a sister of the plaintiff, A. J. Simler, and both now lived in Oklahoma City, Oklahoma. Plaintiff lived in Arkansas and was the only heir at law of his sister, Birdine Fletcher. That the farm was producing oil and had been for many years, being located in the rich Cement Field of Caddo County, Oklahoma. That plaintiff, Mr. A. J. Simler, in an effort to obtain control of the 160-acre oil producing farm did on October 2, 1950, file a petition in the County Court of Oklahoma County, seeking to be appointed Guardian of Mrs. Birdine Fletcher, his sister, and John W. Fletcher, his brother-in-law. (copies of his verified petition in Case No. 29063 County Court of Oklahoma are attached as EXHIBITS 1 and 2 as part of this Counterclaim). Upon hearing the Court appointed another Guardian and later Mr. John W. Fletcher died and Mrs. Fletcher, sister of plaintiff, was restored to legal capacity and her Guardianship ended and she was appointed Administratrix of his Estate, and as they had no children, she inherited and took possession of the Caddo County farm.

—4—

Birdine Fletcher, sister of plaintiff, then had prepared and she signed her Last Will and Testament, dated July 9, 1952, in which she made at least 19 bequests of money to others and in which she willed to the plaintiff Mr. A. J. Simler, her only remaining brother and sole and only heir at law the following:

> "I will and bequeath to my brother, A. J. Simler of Little Rock, Arkansas, the sum of one ($1.00) this amount and no more."

all as shown by a copy of her will hereto attached and made a part hereof as EXHIBIT 3. Birdine Fletcher died on July 13, 1952, and on July 18, 1952, Mr. A. J. Simler employed Leslie L. Conner, as his lawyer to represent on a contingent fee contract to contest the Fletcher will and to prevent probate thereof. A copy of that agreement of July 18, 1952, is attached as EXHIBIT 4 and made a part hereof.

—5—

Thereafter on July 30, 1952, plaintiff directed the filing of the first contest and began a part of the litigation. Copy of that direction is attached as EXHIBIT 5.

—6—

Thereafter a new theory of law and procedure was discovered by defendant and counterclaimant, Leslie L. Conner and the proposed Federal Court litigation was discussed and by mutual agreement and for the mutual benefit of both parties, the plaintiff, Mr. A. J. Simler, and defendant and counterclaimant, Leslie L. Conner, herein agreed in writing on September 25, 1952, on a clarification of the meaning of the term "reasonable fee" as used in the agreement of July 18, 1952, said agreement of September 25, 1952 being as follows:

"Mr. Leslie L. Conner
Conner, Hilpirt & Britton
Attorneys and Counselors at Law
410-414 Hightower Building
Oklahoma City, Oklahoma

Dear Sir:

With reference to my letter of July 18, 1952, employing your firm in the Fletcher Will and Estate Contest, I agree that the reasonable fee is:

25% of the amount recovered and if settled without trial.

33% of the amount recovered if case is tried in County and District Court.

50% of the amount recovered if the case is appealed to the Supreme Court.

I understand that all expenses, taxes and costs are to be deducted first.

This is a contingent fee and if nothing is recovered, no fee is to be paid.

If anything is recovered or settled, I agree to pay you the above fees.

Yours truly,
/s/ A. J. Simler

Copy of which is attached hereto as EXHIBIT 6 and made a part hereof.

—7—

The objections to the Probate of the Will of Birdine Fletcher, were prepared and filed in the County Court of Oklahoma County by defendant and counterclaimant in Case No. 31726 contesting the beneficiary Sisters of St. Francis, a corporation, who were to receive all of the Estate of Birdine Fletcher except a few thousand dollars bequests.

—8—

Thereafter on October 14, 1952, after much preparation and research the Federal Court Litigation was authorized and directed by plaintiff and the defendant and counterclaimant as his attorney to file suit in the United States District Court for the Western District of Oklahoma in Case No. 5619 in order to attempt to obtain the real estate in Caddo County, Oklahoma, for plaintiff and for such other matters as the Court may determine, copy of plaintiff's written direction is attached as EXHIBIT 7. It was filed as Cause No. 5619; and styled A. J. Simler, plaintiff, v. Sisters of St. Francis, a corporation, and W. H.

Wilson, Executor of the Estate of Birdine Fletcher, deceased. The case was contested by those defendant and dismissed by the District Court. A copy of the Appearance Docket in case No. 5619 is attached hereto as EXHIBIT 8 and made a part hereof and a copy of the opinion of the Court dismissing the cause (110F (s) 761) is attached as EXHIBIT 9 and made a part hereof. Hereafter said matter was appealed as case No. 4656 to the Court of Appeals Tenth Circuit at Denver, Colorado, briefed and orally argued and that Court entered a judgment reversing the trial court, a copy of that Opinion is attached as EXHIBIT 10 and made a part hereof and is recorded in 210 Federal (2) page 99. Appearance Docket on 4656 Court of Appeals is Exhibit No. 10A.

While this litigation was in process the County Court of Oklahoma County had entered an order in case No. 31726 admitting the will of Birdine Fletcher, deceased, to Probate and held the will valid and appointed W. H. Wilson the person she named in her will as Executor thereof, and a copy of that order dated October 2, 1952, is attached hereto as EXHIBIT 11, and made a part hereof.

—9—

Thereafter Appeal was had in the will Case No. 31726 from the County Court to the District Court of Oklahoma County and the cause became No. 129158 and, after much preparation and the testimony of over 50 witnesses used taking many days trial, Judge Clarence Mills of the District Court, affirmed the County Court order admitting the Will to Probate copy of the Appearance Docket in that District Court appeal case is attached as EXHIBIT 12, and made a part hereof.

—10—

That after the appeal of Mr. A. J. Simler, to the District Court in the will litigation and after the filing of Case 5619 in the Federal Court the Executor, W. H. Wilson, and the Sisters and several of their lawyers filed

an original action in the Supreme Court of Oklahoma against A. J. Simler as Case No. 36341, wherein they petitioned the Supreme Court to assume original jurisdiction of such a great and new question and to construe the statutes of the State of Oklahoma to assure them that the residuary beneficiary of the Fletcher will could take the real estate. This proceeding was vigorously contested, briefed and orally argued and won the Court denied the Executor and the Sisters' Petition and refused to take jurisdiction on February 2, 1954 copy of that Appearance Docket of the Supreme Court of Oklahoma is attached as EXHIBIT 13, and made a part hereof.

—11—

Thereafter Case No. 129158 in the District Court, which was 31726 in the County Court, on the Will Contest was appealed for A. J. Simler, plaintiff herein by his attorney, counterclaimant, Leslie L. Conner, to the Supreme Court of the State of Oklahoma, and became cause No. 36075 in the Supreme Court. After diligent research and briefing and vigorous oral argument made therein the case was affirmed by the Supreme Court of Oklahoma, which held the Will of Birdine Fletcher, sister of Mr. A. J. Simler, to be valid to pass title to all her property and denied the theories of the plaintiff that his sister, Birdine Fletcher, did not have testamentary capacity to make her will or and that she was under undue influence of the Sisters of St. Francis, a foreign corporation the principal beneficiaries under her will, who had been operating St. Anthony's Hospital in Oklahoma City.

Copy of that opinion in No. 36075 in the Supreme Court of Oklahoma is attached as EXHIBIT 14 and made a part hereof. Copy of the Appearance Docket in the Supreme Court is attached as 14A.

—12—

That while the litigation and contest were proceeding, both in the State and Federal Courts, W. H. Wilson, the Executor of the estate of Birdine Fletcher, deceased, and the Sisters of St. Francis, a foreign corporation, filed a petition for Certiorari ("Appeal") to the Supreme Court of the United States in Washington, D.C. from the judgment of the Court of Appeals, Tenth Circuit from 210 F (2) 99 and it was necessary for defendant and counterclaimant, Leslie L. Conner, to resist the Petition, which was successfully done and the Supreme Court of the United States denied Certiorari (the appeal) in Case No. 677, October, 1953, term on (April 25, 1954) as shown by EXHIBIT 15, attached hereto and made a part hereof, being reported in 347 U. S. 954 and 98 L. Ed. in 1099 and thereafter the Executor and the Sisters of St. Francis filed a petition for Rehearing and Motion to Stay of Proceedings in the Supreme Court of the United States in the same case, which was also denied by the Supreme Court on May 24, 1954, 98 L. Ed. 113, copy of which is attached as EXHIBIT 16 and made a part hereof.

—13—

Thereafter that appeal case was returned from the Supreme Court to the Court of Appeals, Tenth Circuit and then to the Western District of Oklahoma, in Oklahoma City, and it was necessary to make application and obtain from the Federal District Court certain injunctions against W. H. Wilson, the Executor, and the Sisters, and have judgment entered in Case 5619, which was done on June 14, 1954, copy of the judgment is attached as EXHIBIT 17, which was again appealed by Wilson and the Sisters to the Court of Appeals, Tenth Circuit, as Case No. 4961 and on Motion of Counterclaimant and for legal reasons the Court of Appeals dismissed their appeal

—14—

Thereafter in Case No. 5619 and on March 17, 1955, Injunctions were issued against Wilson and Sisters, copy attached as EXHIBIT 18.

—15—

Thereafter the said W. H. Wilson, Executor of the estate of Birdine Fletcher, deceased, and the Sisters of St. Francis, a corporation, and their attorneys continued to claim the farm and right to possession of the oil runs and because of their claims and acts it was necessary to file Case No. 6352 in the Federal Court styled by Mr. A. J. Simler, plaintiff, against the Sisters of St. Francis, a corporation, seeking to quiet title in Mr. A. J. Simler to the 160-acre oil farm, all as shown by the Appearance Docket being EXHIBIT 19 in the United States District Court for the Western District of Oklahoma.

—16—

Thereafter Mr. A. J. Simler filed a complaint in the United States District Court against Phillips Petroleum a corporation, for an accounting of the oil from the farm and to obtain the oil runs, copy of the Appearance Docket in Case No. 6363 in that Court is attached as EXHIBIT 20.

—17—

Thereafter Mr. A. J. Simler, as plaintiff, sued Phillips Petroleum Company to obtain later oil runs which they refused to pay him, as shown by Appearance Docket in Case No. 6795 being EXHIBIT 21.

—18—

Appeals were had on case 6452 and 6363 and from other orders in 5619 to the Court of Appeals, Tenth Circuit and attached hereto are the copies of the Appearance Dockets of the Court of Appeals, Tenth Circuit, the cases No. 5129 as EXHIBIT 22, Case No. 5130 as EXHIBIT 23, Case No.

5131 as EXHIBIT 24, attached as EXHIBIT 25 is the Injunction issued by the Court of Appeals, Tenth Circuit, March 15, 1955 on Application of A. J. Simler, in Case No. 5102 in that Court against the Executor and Sisters.

—19—

After the entry of the additional judgments of the Circuit Court of Appeals, W. H. Wilson, Executor of the estate of Mrs. Birdine Fletcher, and the Sisters of St. Francis, a corporation, who were defendant in these cases, filed another Appeal to the Court of Appeals, Tenth Circuit, and then to the Supreme Court of the United States asking Certiorari on a second Appeal from a judgment entered in 5619 which was denied on January 31, 1955, in Case 510 October Term 1954 Court as shown in 99 L. Ed. 728, copy of which is hereto attached EXHBIT 26.

—20—

After the Court of Appeals, Tenth Circuit had entered judgments in the cases 5129, 5130, and 5131 without opinions directing the Executor and the Sisters of St. Francis, a corporation, among other things, to divide the accumulated money and runs, W. H. Wilson, Executor, and the Sisters of St. Francis, a corporation, again for the third time sought Certiorari on appeal to the Supreme Court of the United States and the Executor and Sisters employed the John W. Davis, law firm, being Davis, Poll., Wardwell, Sunderland, and Kiendl, of New York City, a famous and outstanding New York law firm, to represent them. This action was resisted by defendant and Counterclaimant, Leslie H. Conner; but Certiorari was granted in Case 409 on November 14, 1955, and the judgments entered by the Court of Appeals, Tenth Circuit, in Cases 5129, 5130 and 5131 were vacated and the matter returned to the Court of Appeals, Tenth Circuit, as shown by the opinion in 100 L. Ed. 785 also—U. S. , copy of which is attached hereto as EXHIBIT 27. Petition for rehearing

was filed by defendant and counterclaimant, Leslie L. Conner, but was denied in January, 1956. See EXHIBIT 28.

—21—

Thereafter the County Court of Oklahoma County entered its Final Order in Case 31726, allowing the Final Account of the Executor on December 9, 1954, and distributing to A. J. Simler the 160-acre oil farm, but charging him with payment of all legacies, interest, taxes, costs and the expenses (which in effect vacated the order), a copy of which is attached as EXHIBIT 29, which order was appealed for Mr. A. J. Simler by his attorney, Leslie L. Conner, the defendant and counterclaimant, to the District Court of Oklahoma County on December 15, 1954, and who presented to and heard by District Judge A. P. VanMeter, who affirmed the order of the County Court, copy of the Appearance Docket in Case No. 134859 District Court of Oklahoma attached as EXHIBIT 30.

—22—

On Appeal to the Supreme Court of Oklahoma by defendant and counterclaimant, Leslie L. Conner, as Attorney for A. J. Simler, these causes became No. 37365 in the Supreme Court and after diligent work, planning, briefing, research and oral argument, the Supreme Court reversed that judgment in part, all as shown by a copy of the Appearance Docket in that case attached as EXHIBIT 31, which saved plaintiff, Mr. A. J. Simler, thousands of dollars, all being reported 308 P.2d 304, copy attached as EXHIBIT 32.

—23—

Thereafter Phillips Petroleum Company sued A. J. Simler and Wilson and Sisters for Interpleader on the oil runs it was holding as shown in copy of the Appearance Docket attached as EXHIBIT 33, being Federal District Court Case No. 7107.

—24—

Thereafter the estate of Birdine Fletcher was closed and W. H. Wilson, Executor of the Will and Estate of Birdine Fletcher, was discharged, all as shown by the Appearance Docket in Case No. 31726 attached here as EXHIBIT 34, and the property distributed and the plaintiff A. J. Simler obtained the farm and returns and the balance of the cash.

—25—

Thereafter the plaintiff and counterclaimant, this defendant, entered into written agreements dated May 22, 1957, which are self-explanatory, and copies are attached as EXHIBIT 35 on Division of money, and EXHIBIT 36, being agreement that plaintiff would not sell, dispose of, transfer or encumber the farm described as:

NW¼ of Section 34, Township 6 North, Range 10 West in Caddo County, Oklahoma,

before settling with defendant for his services.

That all 36 Exhibits attached hereto are made a part of the Answer and Counterclaim as though herein repeated and set forth in full.

—26—

The agreements for division of recovered property between plaintiff, Mr. A. J. Simler, and defendant and counterclaimant, Leslie L. Conner, was on a 50% basis because of the extensive litigation and Appeals and has not been performed by plaintiff, Mr. A. J. Simler, although defendant has worked as attorney for plaintiff for over 5 years, and *has performed his contract*, obtained the farm and balance of the runs and plaintiff, Mr. A. J. Simler, has refused to perform his agreement, now that recovery has been made and refuses to deliver to defendant, Leslie L. Conner, his attorney, his one-half of the recovery.

—27—

Plaintiff, Mr. A. J. Simler, did not own or have any right, title or interest in and to the 160-acre farm heretofore described and his only hope of securing any interest therein was by the diligent, constant and effective efforts of an attorney able and willing to prosecute his claim to a successful conclusion. The entire litigation involved in the contest of the will of Birdine Fletcher and the Federal Court Litigation to prevent the beneficiary from taking the property was both novel and extremely difficult. The plaintiff and contestant, Mr. A. J. Simler, was not a local citizen of this community (nor an established company) nor a regular client but was a resident of North Little Rock, Arkansas.

—28—

Employment and attempt to recover more than the "$1.00 and no more" which his sister willed him, in such case, was beset with legal disadvantages, considering the fact that the principal defendant and the beneficiary, the Sisters of St. Francis, in his sister's will was a Catholic Religious Society and Sisters operating the largest hospital and other charities in Oklahoma and who had befriended and taken care of Birdine Fletcher, his sister, in her old age and sickness. The fact that his sister, Birdine Fletcher, preferred and willed all her property to charity rather than giving it to her brother, this plaintiff, A. J. Simler. He had filed a Guardianship case against her in 1950 in an attempt during her lifetime to obtain possession of her property, in this action he failed.

—29—

Acceptance of employment in such a case involved many considerations. The employment was on a contingent fee contract, uncertain of compensation or return of expenses advanced or rent and salaries paid to employees and others and the investigation required and the amount

of work involved and *the daily cost of operating a law firm and office.*

—30—

The litigation took an excessive amount of *lawyer time, stenographers, briefs, conferences, letter writing, travel, research, arguments, telephone calls,* and expense involved a great amount of thinking, planning, investigation and constant work and effort all the time, on the part of the defendant and counterclaimant, Leslie L. Conner. It involved research writing and preparation of briefs and making of many legal arguments in the County Court, District Courts, and the Supreme Court and the Court of Appeals, Tenth Circuit; and the Supreme Court of the United States.

—31—

It also involved hours, days, weeks, and months and more than five years of work and labor. It took faith and perserverance (in order to win the case and obtain for A. J. Simler, this plaintiff, more than the "*$1.00 and no more*" which his own sister, Birdine Fletcher, had left him in her will).

—32—

Defendant and counterclaimant alleges he has fully performed his legal services and is entitled to his part of the recovery.

—33—

It was a contingent fee on a graduated scale made in 1952, when plaintiff had "*one dollar and no more,*" which fifty per cent or one-half contingent fee of whatever is recovered, after payment of expenses considering the amount involved, the number of cases and courts involved, is the customary charge made by members of the Bar in this locality who practice law and try law suits and appeal cases in the State and Federal Courts and

is the amount of contingent attorneys fees allowed by the laws of the State of Oklahoma. (It took skill and faith to conduct the litigation. The amount involved in this case was great. As a result of the skill, labor and legal services and the constant effort of this defendant and counterclaimant as the lawyer for the plaintiff, Mr. A. J. Simler, there was recovered the 160-acre oil producing farm with many oil wells and a share of the oil produced therefrom each month. Other wells are being drilled thereon and only the top soil sands have been produced and many feet of productive sands remain. It is very valuable and defendant and counterclaimant is entitled to be adjudged to be over one-half thereof.)

WHEREFORE, Leslie L. Conner, defendant and counterclaimant, prays this Court to enter judgment for him and against plaintiff as follows:

1. That this Court render a judgment in favor of Leslie L. Conner, defendant and counterclaimant herein and against the plaintiff, A. J. Simler, adjudging that defendant and counterclaimant, Leslie L. Conner, having performed all these legal services on a contingent fee contract and agreement as attorney for A. J. Simler, is entitled to, and adjudged to be, the owner of a one-half (1/2) undivided interest in all oil produced from the

> Northwest Quarter (NW¼) of Section Thirty Four (34) in Township Six (6) North, Range Ten (10) West in Caddo County, Oklahoma,

since April 1, 1957, and that after deducting of all sums paid to Mr. James E. Grigsby and Mr. John B. Ogden to May, 1957 and all court costs and expenses spent by defendant and counterclaimant, Leslie L. Conner, and all expenses spent by plaintiff A. J. Simler, that the defendant and counterclaimant be adjudged to be owner of one-half of the net remainder of the sum of over $30,000.00 paid to plaintiff, A. J. Simler, by the Executor in and since

May, 1957, less the amount paid at that time to defendant and counterclaimant by the plaintiff and,

2. That the Court enter judgment in favor of Leslie L. Conner, defendant and counterclaimant, and against A. J. Simler, the plaintiff, adjudging that Leslie L. Conner, defendant, and counterclaimant has an attorney's lien on and entitled to judgment for and the owner of an undivided one-half (½) interest in:

> The Northwest Quarter (NW¼) of Section Thirty Four (34), Township Six (6) North, Range Ten (10) West in Caddo County, Oklahoma,

and said lien be foreclosed all as provided by law and plaintiff be directed to execute the proper and legal conveyance of said one-half undivided interest in said land, and,

3. For such other further and different relief, legal or equitable, general or special, to which he may show himself entitled, including interest and costs.

LESLIE L. CONNER

Certificate

A copy of this answer to Complaint and Amendment to complaint and Counterclaim and all Exhibits made a part thereof were delivered to Hon. John B. Ogden, attorney for plaintiff, Mr. A. J. Simler, this 23rd day of September, 1958.

LESLIE L. CONNER

APPENDIX V

REPLY TO COUNTERCLAIM OF DEFENDANT

John B. Ogden
1408-9 Liberty Bank Bldg.
Oklahoma City, Oklahoma
Attorney for Plaintiff

May 15th, 1959

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

A. J. Simler, Plaintiff, v. Leslie L. Conner, Defendant. No. 8008 Civil.

REPLY TO COUNTERCLAIM OF DEFENDANT

Comes now the above named plaintiff and for his reply to the Counterclaim set forth in Paragraphs 1 through 33, inclusive, and 1 to 3 in the prayer of the Counterclaim, and says:

1.

This plaintiff specifically denies that he entered into an agreement on September 25, 1952 for the purpose of clarifying the terms of the contingent fee contract entered into on July 18, 1952 between the plaintiff and the defendant, Leslie L. Conner.

2.

This plaintiff shows to this Honorable Court that the true facts with reference to the letter dated September 25, 1952 and referred to in Paragraph 2 of the Counterclaim are as follows.

3.

This plaintiff shows that heretofore and on or about July 18, 1952, he was introduced to the defendant, Leslie

L. Conner, and the plaintiff had not prior thereto known the said Leslie L. Conner and that on said date the plaintiff and defendant discussed employment by the plaintiff of the said defendant to represent this plaintiff as his attorney in a certain will contest case then filed and pending or about to be filed in the County Court of Oklahoma County, Oklahoma, involving the will of plaintiff's deceased sister, Birdine Fletcher. That at the time of the death of Birdine Fletcher she owned real property in Oklahoma City, Oklahoma, personal property, bonds, notes, and securities and the real estate consisted of a farm located in Caddo County, Oklahoma and described in the Counterclaim of the defendant herein.

4.

This plaintiff now shows that after a conference with the said Leslie L. Conner, he signed a letter of employment prepared by the said defendant and dated July 18, 1952, which letter of employment or copy thereof is pled in the Counterclaim on file herein and in which and by the terms of which the said Leslie L. Conner was to receive for his services a reasonable fee and this plaintiff was to pay the cost of the litigation which might or would thereafter ensue, all as more fully appears from a copy of said letter pled herein, and which said letter of employment is in words and figures as follows, to-wit:

"July 18, 1952

Mr. Leslie L. Conner, Atty.
410-414 Hightower Bldg.
Oklahoma City, Oklahoma.

Dear Sir:—

Re: BIRDINE FLETCHER ESTATE
COUNTY COURT, OKLAHOMA
COUNTY, OKLAHOMA

This confirms our employment of yourself and law firm to represent us in the matter of the Estate of

Birdine Fletcher, deceased, now pending in the County Court of Oklahoma County, Oklahoma, wherein certain people have filed petition to probate an alleged will supposed to be signed by her.

We agree to pay all the witness fees, court costs, furnish all bonds, purchase copy of all records from court reporters, prepare the evidence and pay all necessary bills to contest the admission of this will to probate because we do not believe it is a valid will. We understand that this will run in the approximate neighborhood of $1,000.00.

We also agree to pay you and your firm a reasonable attorney's fee for the services rendered and to be rendered in this case in the County Court, and if necessary, in the District Court and if necessary in the Supreme Court of the State of Oklahoma, which fee may be set by the County Court or any other court if the matter is successful either by trial or judgment or compromise.

If the matter is not won, compromised or settled, you are not to charge us a fee.

Yours truly,

/s/ A. J. Simler
A. J. Simler, for himself
and his children"

5.

This plaintiff now shows to this Honorable Court that after the execution of said letter by the plaintiff, the relationship of attorney and client then existed and that the said defendant then became the attorney for the plaintiff and began representing the said plaintiff as his attorney in connection with the said estate or will contest.

6.

This plaintiff shows that thereafter, the said Leslie L. Conner, defendant in this cause, prepared a will for the said plaintiff by the terms of which the said Leslie L. Conner was appointed attorney for the Estate of A. J. Simler, plaintiff, and the said plaintiff at that time had great confidence in the said attorney, Leslie L. Conner, and on or about the 25th day of September, or shortly prior thereto the defendant Leslie L. Conner called the plaintiff by telephone and asked him to come to the office of the said Leslie L. Conner and advised him that he should come down in connection with re-writing the will of the said A. J. Simler and did not mention any change or modification or clarification of the contract of employment of July 18, 1952. The said plaintiff went alone to the office of Leslie L. Conner, and believing at the time that he was going there for the purpose of some matter in connection with the changing of his will and at the suggestion of said Leslie L. Conner.

7.

This plaintiff shows to this Honorable Court that at that time the offices where Leslie L. Conner officed had on the door and on their stationery "Conner, Hilpirt and Britton," and he assumed by virtue thereof that it was a law firm and also by virtue of the fact that the letter of July 18, 1952 prepared by Leslie L. Conner uses this language in part: "This confirms our employment of yourself and law firm. . . ."

8.

This plaintiff shows that when he arrived at the office of Leslie L. Conner, after a visitation, the defendant suggested that he take the plaintiff to lunch and plaintiff and defendant went to a cafe where beer was served and the defendant herein suggested to the plaintiff that he drink some beer and have lunch, which the plaintiff did. Then,

after lunch, the plaintiff and defendant, at defendant's suggestion, returned to the law office of the defendant and in the private office of the defendant, Arnold B. Britton, an associate or employee of Leslie L. Conner and Leslie L. Conner then proceeded to insist upon the plaintiff herein signing the letter dated September 25, 1952 and at that time this plaintiff had no advice other than the advice and admonition given him by his attorneys, Leslie L. Conner and Arnold B. Britton. That, at that time, the said Leslie L. Conner and Arnold B. Britton told the plaintiff that if he would sign the said letter, they would win for him everything in the estate and annul the will of Birdine Fletcher, and the said plaintiff herein argued with said attorneys and told them that he was willing for them to have a reasonable fee as provided in his letter of July 18, 1952, but that the said attorneys, namely, Leslie L. Conner and Arnold B. Britton, continued to harrass, harangue and argue with this plaintiff and coerced him and told him that it was to his best interest to sign said second letter on the 25th day of September, 1952.

9.

This plaintiff shows to this Honorable Court that at that time, he was past 74 years of age, had not had experience in litigation, had no way of knowing what was reasonable percentage-wise or otherwise in connection with the employment of attorneys and knowing that he had already employed said attorney for a reasonable fee, he continued to resist the demands, arguments, requests and advice of his lawyers to sign said contract or letter of September 25, 1952. This plaintiff further shows that he was worried over said litigation and greatly disturbed and had no one present with whom he could counsel and was not given an opportunity to seek outside or independent advice or counsel. Plaintiff shows that at that time he had great confidence in the said Leslie L. Conner and that the said

Leslie L. Conner knew that this plaintiff was without advice or knowledge concerning the matter and continually and consistently insisted upon the said A. J. Simler signing said letter. This plaintiff further shows that at such time and on said date this plaintiff executed a will prepared by the said Leslie L. Conner in which will the said Leslie L. Conner inserted the following paragraph in Article 9 thereof:

"I direct that the executor employ my attorney Mr. Leslie L. Conner, 410-415 Hightower Building, Oklahoma City, Oklahoma, as the sole and only attorney for my estate."

10.

This plaintiff further shows to this Honorable Court that he had advised Mr. Conner, the defendant, that he did not wish to have anyone present with him when he executed his will and that the said Leslie L. Conner knew on said occasion that none of the relatives or friends of the said plaintiff were with him or would be with him and it was agreed that he should come to the office alone on said date, namely, September 25, 1952. This plaintiff further shows that the witnesses to the said execution of said will were as follows: "Ruth Mayhew, Oklahoma City, Oklahoma," who was secretary to Leslie L. Conner, and "Arnold B. Britton, Oklahoma City, Oklahoma," who was either an associate, partner or employee of the said Leslie L. Conner, and "Leslie L. Conner, Oklahoma City, Oklahoma."

11.

That at said time the said Leslie L. Conner had already prepared before the plaintiff appeared in said office, the letter of September 25, 1952, and that said letter was not the idea, expression or will of this plaintiff, but constituted a prepared instrument by the said Leslie L. Conner before he had even talked to this plaintiff and that the day

of the month was blank on said letter and the word "*September,*" then "_____", "*1952*" was at the end or beginning of said letter. That the said defendant inserted with a pen the figures "25" in said date of the letter. This plaintiff shows to this Honorable Court that said letter did not express a free and mutual consent or a free consent upon the part of the said plaintiff, A. J. Simler. That this plaintiff had no way of knowing, to begin with, what was a reasonable fee, and the letter of July 18, 1952 constituted the contract of employment and there was no consideration whatsoever between the parties for the execution of the letter of September 25, 1952.

12.

This plaintiff further shows that Leslie L. Conner did not sign the said second letter or first letter and did not agree to do anything in the second letter that he was not bound to do by virtue of the first letter. And, there was absolutely no consideration of any kind, character, nature or description for the execution of the letter of September 25, 1952.

13.

This plaintiff shows to this Honorable Court that the said Leslie L. Conner is a lawyer of many years practice, is a graduate of the University of Oklahoma, licensed by the Supreme Court of Oklahoma, United State Court of Appeals, Tenth Circuit, United States District Court for the Western District of Oklahoma, and the Supreme Court of the United States, and that this plaintiff only has an Eighth Grade education, was old, worried and disturbed and without advice on said occasion except the advice of the said Leslie L. Conner, and Arnold B. Britton, and that said defendant, Leslie L. Conner, took advantage of his client in securing said letter and over-persuaded the said plaintiff to sign the said letter in the private, closed office of the said Leslie L. Conner, and the same did not constitute the will

or desire of the said plaintiff, A. J. Simler, but was only the will and desire or expressed only the will and desire of the lawyer who prepared said letter, namely, Leslie L. Conner.

14.

This plaintiff further shows that by virtue thereof said letter is void and void for the further reason that said letter was made and prepared for the benefit of the lawyer and to his advantage and is therefore void and of no force and effect because of the fact that the relationship of attorney and client then existed and the plaintiff had great confidence and respect for the said Leslie L. Conner and his opinion and advice and accepted the same solely in the signing of this letter over his actual protest.

15.

This plaintiff further shows to this Honorable Court that the said Leslie L. Conner is estopped to rely upon said letter or plead the same or receive any benefits by virtue thereof, and that the said Leslie L. Conner, in procuring the signature of the said A. J. Simler on said letter, acted fraudulently and in bad faith and was guilty of actual fraud under the circumstances hereinabove shown, and by virtue of such fraud, said letter is void and of no force and effect.

16.

That in addition to the above, this plaintiff shows to this Honorable Court that the circumstances as hereinabove pled under which said letter was signed also show that the defendant was guilty of constructive fraud in the preparation of said letter and securing the signature of the said A. J. Simler thereon and thereto without any advice whatever to the said plaintiff except the advice of Leslie L. Conner and Arnold B. Britton, and by virtue of all the

above, the said letter is absolutely void and of no force and effect and the defendant is not entitled to any benefits by virtue thereof or to claim any benefits or interest of any kind by virtue of said letter of September 25, 1952.

17.

This plaintiff shows to this Honorable Court that he always has been willing to pay to the defendant a reasonable attorney fee for his services and that plaintiff, up to this time, has paid to the said defendant Leslie L. Conner, the sum of $24,000.00, and that he believes the same to be reasonable under the circumstances, in view of the other sums and circumstances which will hereinafter be set out, but that this plaintiff is not versed in the law and does not know actually what is a reasonable fee and did not know on September 25, 1952 and therefore, he must of necessity, rely upon the same to be determined in this Court as to whether or not the $24,000.00 heretofore paid is reasonable compensation to the said Leslie L. Conner for his services rendered in said litigation.

18.

This plaintiff specifically denies the allegations in Paragraph 6 of the Cross Complaint and denies that the letter of September 25, 1952 was mutually agreed upon between the parties, but alleges the true facts to be concerning said letter as hereinabove set out and alleges and shows that said letter of September 25, 1952 is void and of no force and effect.

19.

This plaintiff further shows that the said will contest, mentioned in Paragraph 7 was lost and the will admitted to probate in the County Court of Oklahoma County, Oklahoma, and on appeal to the District Court, the protest was denied and the will was there admitted to probate and the cause was appealed to the Supreme Court of the State of

Oklahoma and again the will was admitted to probate and after the Petition for Rehearing in the cause, the opinion became final. That on or about the 16th day of October, 1952, there was filed in the United States District Court, under Case No. 5619 a case styled "A. J. Simler versus W. H. Wilson, Executor of the Estate of Birdine Fletcher, deceased and The Sister of St. Francis, a Corporation," asking for a Declaratory Judgment and asking the court, in effect, to declare that the Sisters of St. Francis, a Corporation, could not own or hold real property outside of an incorporated city or town and to forbid the corporation from attempting to hold the farm formerly owned by Birdine Fletcher in Caddo County, Oklahoma, for the reason that the farm was not reasonably necessary or proper for carrying on the business for which the corporation of "The Sisters of St. Francis" was chartered or licensed and, therefore, the property having been willed to the "Sisters of St. Francis" could not be received by such corporation, and that the plaintiff herein, being the brother of the deceased Birdine Fletcher, was entitled to inherit the said property, and that the defendant in that case filed a Motion to Dismiss Summary Judgment and the same was sustained and the cause was dismissed and appealed to the United States Court of Appeals of the Tenth Circuit, under Case Number 4656, styled "Simler versus Wilson et al.," cited at 210 F. 2d Page 99, and said cause was reversed and judgment was entered in favor of the plaintiff in that cause, who is the plaintiff in this cause, A. J. Simler.

20.

That in said cause in the United States Court of Appeals, James E. Grigsby appeared and argued said cause and Laglie L. Conner, Charles W. Conner, Arnold B. Britton and Phil E. Daugherty of Oklahoma City, Oklahoma, were with him on the brief for the appellant and said Court held, in effect, that the provisions of the Oklahoma Con-

stitution related to ownership of realty by corporations and provisions of business corporations act of Oklahoma relating to the same subject must be construed together and as so construed they forbid a corporation to take, acquire, hold or own realty outside of cities and towns and additions thereto except where reasonably necessary and proper for carrying on business for which the corporation was chartered or licensed and such provisions are prohibitory and not merely regulative, citing Oklahoma Constitution, Article 22, Section 2, 18 Oklahoma Statutes 1951, Article 1.20.

21.

This plaintiff now shows to this Honorable Court that after said opinion was rendered by said Court, the appellees therein filed a Petition for a Writ of Certiorari in the Supreme Court of the United States, which was by that Court denied and said judgment became final.

22.

This plaintiff shows to this Honorable Court that it was not absolutely necessary to raise such question or file such suit in the United States District Court and that the same could have been litigated in the state court without the necessity of going into the United States District Court, and that at the time of the death of Birdine Fletcher by virtue of the laws of the State of Oklahoma and constitutional provisions hereinabove set forth, this plaintiff became immediately the owner of said real estate situated in Caddo County, Oklahoma and the Circuit Court of Appeals of the Tenth Circuit in said opinion mentioned used the following language, in part:

> "And the land not being legally and effectively devised, no title vested in the devisees. Instead, title immediately passed under the law of descent and vested in the appellant as the sole heir at law of the decedent."

23.

This plaintiff admits that a suit was filed in the Supreme Court, as alleged in Paragraph 10 of the Cross Complaint and as reflected by Exhibit 13, and as heretofore pled, the plaintiff admits that the Supreme Court of the United States denied certiorari as shown by Exhibit 16, and that Exhibit 17 mentioned in Paragraph 13 of the Cross Complaint, reflects the rulings of the Court in said cause. That suit was filed as alleged in Paragraphs 15, 16, 17, 18 and 19, and that the exhibits attached to the Cross Complaint reflecting said proceedings are true and correct copies of what they purport.

24.

That certiorari was denied as reflected by Exhibit 26, in the Supreme Court of the United States, and that Court merely used the word "denied" with no opinion or argument thereon.

25.

This plaintiff admits the allegations with reference to the Petition for Certiorari alleged in Paragraph 20, but does not know how famous the lawyers mentioned therein are, but alleges the true facts to be that whatever their fame may be or have been, that he was required to pay them for their services in presenting said case in the Supreme Court of the United States, together with Fred E. Suits and John B. or J. B. Dudley of Oklahoma City, Oklahoma, and that in all of said litigation mentioned, this plaintiff was required to pay the attorneys opposing him who represented the estate and the Sisters of St. Francis, and that the defendant in this cause did not appear and argue said matter orally in the Supreme Court of the United States, but merely filed a brief and response, and that the opinion mentioned in Paragraph 20 by the Supreme Court of the United States, was rendered without oral argument and

merely upon the briefs, and no person was required to make a trip to Washington, D.C., in connection therewith. The opinion of the Supreme Court of the United States is, in words and figures as follows, to-wit:

"The Petition for Writ of Certiorari is granted. The judgment of the Court of Appeals is vacated and the judgment of the District Court reinstated."

26.

This plaintiff shows that he was required to pay the attorneys who secured said opinion which included Porter R. Chandler and Davis, Polk, Wardwell, Sunderland and Kiendl, all of New York City, and Fred E. Suits and J. B. Dudley, both of Oklahoma City, Oklahoma for the petitioners.

27.

The plaintiff admits the proceedings mentioned in Paragraph 21 and that the case was appealed to the Supreme Court of the State of Oklahoma, and is cited in 308 P. 2d, Page 304, as shown by Exhibit 32 attached to the defendant's Cross Complaint.

28.

This plaintiff admits that proceedings were had as shown and pled in Paragraph 23 of the Cross Complaint, as reflected by Exhibit 33 and Paragraph 24 of Exhibit 34, with reference to Paragraph 25 of the Cross Complaint.

29.

This plaintiff shows to this Honorable Court that on or about May 22, 1957, the plaintiff and defendant entered into said agreement merely for the purpose of compromising or disbursing money with the strict agreement that the same would not be used and that said agreement would

in no wise be used either for or against either of the parties, and that said agreement provides, among other things:

"Now, therefore, without prejudice to the claims, contentions or agreement of either Leslie L. Conner or A. J. Simler with reference to said attorney's fees, it is agreed as follows:

"First. That this instrument and agreement shall in no wise be considered by any of the parties hereto as a construction of the agreement with reference to attorney's fees between Leslie L. Conner and A. J. Simler, and this agreement shall not be offered as evidence in any court by either of the parties hereto or any other person or the heirs, executors, assigns or administrators of any of the parties hereto. It is understood between the parties that this agreement simply is made so that the money now on hand can be used in part and as hereinafter set out by the parties hereto."

Said exhibit being attached to the defendant's Cross Complaint as Number 35 and was made with the strict understanding and upon the honor and integrity of the parties herein involved that the same would neither be used in any shape, form or fashion by either of the parties in any litigation.

30.

This plaintiff shows that the said Leslie L. Conner has breached said agreement by attaching the same thereto as Exhibit 35 and pleading the same in this cause and attempting to gain advantage over this plaintiff, and that said exhibit should be stricken and not exhibited by the Court and that said agreement further provided, in part, as follows, and on Page 2 thereof, all future oil payments from the aforesaid described land shall be paid to A. J. Simler.

31.

This plaintiff further shows that the said Leslie L. Conner breached that part of said agreement by causing all oil runs to be tied up or held by the Phillips Petroleum Company, and that said funds have been accumulating on account thereof and that this plaintiff has not been permitted to receive said runs which are justly, legally, and rightfully his, and that the said plaintiff herein, A. J. Simler, has suffered great loss thereby.

31.

This plaintiff shows that the statutes of the State of Oklahoma provide that neither party can use against the other any statement in an effort to compromise any matter and for such reason said exhibit is wholly incompetent and should not be considered by this Court in determining this matter.

32.

This plaintiff specifically denies that the defendant was on a 50% basis as alleged in Paragraph 26 of his Cross Complaint and specifically denies that the defendant is entitled to 50% or any other percentage of the property of this plaintiff and alleges and states that the only sum to which the defendant is entitled is a reasonable attorney's fee and that the defendant should not attempt to claim an unreasonable fee, but that the defendant is attempting to take advantage of this plaintiff and collect an unreasonable fee and take the property which belongs to this plaintiff and which became his property upon the death of his sister, Birdine Fletcher.

33.

This plaintiff, with reference to Paragraph 27 of the Cross Complaint, denies that he did not own or have any right, title and interest in and to the 160-acre farm de-

scribed, but that he became the sole owner thereof upon the death of his sister, and that the question presented to the Court of Appeals, Tenth Circuit, as reflected by 210 F. 2d, Page 99, *Simler* v. *Wilson*, was not a difficult question, but was a simple question of fact that the corporation under the Constitution and Laws of Oklahoma, could not take, acquire, hold or own realty outside of cities and towns and additions thereto except where reasonably necessary and proper for carrying on business for which the corporation was chartered or licensed, and that such provisions are prohibitory, not merely regulative, and that such simple questions simply were that since the Sisters of St. Francis was a corporation, operating a hospital in Oklahoma City, Oklahoma, it could not take or hold said farm and that the question was not novel and extremely difficult, but was actually a simple lawsuit.

34.

This plaintiff, with reference to Paragraph 20 of the Cross Complaint, denies that he was beset with legal disadvantages merely because the Sisters of St. Francis was a Catholic religious society and operated a hospital in Oklahoma City, Oklahoma.

35.

This plaintiff specifically denies that he filed a guardianship case against his sister in 1950 in an attempt, during her lifetime, to obtain possession of her property and that he failed in said action, but alleges the true facts to be that his sister, at such time, was in a poor state of health, mentally and physically, and that he filed a Petition for Appointment of a Guardian, asking the Court to appoint him or any other suitable person to be guardian and that he told the County Judge to appoint any person that he saw fit and that the judge, after a full and complete hearing, held that Birdine Fletcher was incompetent to handle her affairs

and appointed the Fidelity National Bank of Oklahoma City, as her Guardian without any objection or protest upon the part of A. J. Simler. That plaintiff was acting in the utmost good faith to help and aid his sister during her incompetency, which the County Court found to exist, when she was fully represented by counsel and after hearing many expert witnesses and medical doctors as to her condition, and that when she filed an application to be restored to competency, the said A. J. Simler appeared in Court and told the County Judge that if the Judge thought she was mentally competent to look after her affairs, that he had no objection whatever to her being restored, that he was only acting for her interests and not his own. That the said A. J. Simler testified in such last case that his sister had shown improvement and that the County Judge then restored her to competency. That said proceedings somewhat irritated his sister, Birdine Fletcher, and that he believes that she was later influenced and that, as a result, she did not leave to him her property when she and the officials of the Sisters of St. Francis, or employees, prepared the will for Birdine Fletcher, deceased.

36.

This plaintiff now shows that after said guardianship proceedings, Birdine Fletcher gave this plaintiff a check for $500.00 as a gift and that she then realized he had acted for her best interests, but later when she became ill and was in said hospital, he believes and therefore alleges that she was unduly influenced against him, but that the said Leslie L. Conner and his associate counsel lost the will case under such circumstances.

37.

This plaintiff, with reference to Paragraph 29, specifically denies that the defendant paid out additional rent or paid additional money to employes on account of handling

the litigation involved and mentioned in the Cross Complaint, but alleges the true facts to be that the said Leslie L. Conner carried on his regular law practice in the same manner as he would have carried it on and with the same compensation he would have received had he not handled the case of this plaintiff, and shows that in addition thereto, that the said Leslie L. Conner told this plaintiff that he would have to hire or did hire a special stenographer for a short time and asked this plaintiff to pay him therefor, which the said plaintiff did pay to the defendant herein.

38.

This plaintiff denies the allegations in Paragraph 30 of the Cross Complaint and shows to this Court in connection therewith that this plaintiff paid to Leslie L. Conner money for traveling expenses, hotel bills in Denver, Colorado and other places, and paid for a trip for Arnold Britton to go to El Paso, Texas, and that Leslie L. Conner charged this plaintiff with his own personal expenses in going to Denver and other places in connection with this matter and this plaintiff specifically denies that Leslie L. Conner ever went to Washington, D.C., to the Supreme Court of the United States on any matter connected with the litigation herein and that neither lawyer appeared before the Supreme Court of the United States, and that if Leslie L. Conner went to Washington, D.C., he went on some other matter, and no business connected with any litigation pertaining to the Birdine Fletcher Estate or this plaintiff.

39.

This plaintiff denies specifically that the defendant, Leslie L. Conner, or anyone associated with him, put in five years of work and labor in this cause, but alleges the true facts to be that his work was very spasmodic and did not require very much work or labor in connection with this case, and no expense unknown to this plaintiff, and

plaintiff shows that he has paid out as expenses in this case and paid to Leslie L. Conner for expenses large sums of money, the exact amount of which at this time is unknown to this plaintiff, but will be well known to the defendant, and the said defendant has a record thereof or should have, and that the said Leslie L. Conner carried on his law practice as usual during said litigation and looked after his practice in the usual, normal and ordinary way.

40.

This plaintiff shows to this Honorable Court that he has been continually harassed, harangued, embarrassed and annoyed by the said Leslie L. Conner and his associates in that James E. Grigsby, one of the associates of Mr. Conner, sued the said A. J. Simler, attached his real property, and that the case was removed to the United States District Court for the Western District of Oklahoma, and that said A. J. Simler was forced to employ other counsel to represent him in said suit and did employ John B. Ogden to represent him therein and to assist Leslie L. Conner in the conclusion of the estate case with reference to the payment of attorney fees, administrator's costs, etc., in the District Court of Oklahoma County, Oklahoma, and the Supreme Court of the State of Oklahoma, and paid the said John B. Ogden $7,500.00 for his services in connection therewith and in order to settle the lawsuit with James E. Grigsby and attempt to get his runs or production from his farm released, settled said case with the said James E. Grigsby for the sum of $12,800.00 and took an assignment from the said James E. Grigsby for 28% of the attorney's fee which would become due to Leslie L. Conner and that Leslie L. Conner had assigned to James E. Grigsby 28% of his fee, which this plaintiff now owns, and that the said 28% was assigned over to the said A. J. Simler by the said James E. Grigsby, and the said A. J. Simler paid the said James E. Grigsby $12,800.00 for the same.

41.

This plaintiff shows that thereafter, Arnold B. Britton, another associate or employee or partner of the said Leslie L. Conner, sued the said A. J. Simler, attached his farm, and the case was removed to the United States District Court of the Western District of Oklahoma, and that the said A. J. Simler was forced to defend said action and that he did defend the same and had counsel appear in both the Grigsby Case and the Britton Case and contest the same, attend various motions, pre-trial conferences, and that the said A. J. Simler was forced to make many trips from his home in Little Rock, Arkansas, at great expense, annoyance and inconvenience to defend said cases which the said associates, employees or partners of the said Leslie L. Conner filed against him, and that the said Conner could not control said parties and admitted that he could not control his own partners and associates and that by virtue thereof, this plaintiff has expended large sums of money and has been continually troubled and harrassed by virtue thereof, and by virtue of having the runs from his property impounded by the Phillips Petroleum Company, and the same is still impounded, this time, however, by virtue of the conduct of the said defendant, Leslie L. Conner.

42.

This plaintiff shows to this Honorable Court that at this time he is 81 years of age and that such annoyance, harrassment and expense have caused him great anxiety and disturbance, and that the said Leslie L. Conner failed in his duties either in associating said parties in said litigation and in failing to control said parties and the said Leslie L. Conner wrote a letter to this plaintiff on October 4, 1955, which is in words and figures, as follows:

[APPENDIX]

"October 4, 1955
Mr. A. J. Simler
R. R. #3
Box 334
North Little Rock, Arkansas

Dear Mr. Simler:

Enclosed find our copies, which we have made and enclose, of the following pleadings filed in the Phillips case.

A. Answer and Counterclaim of Phillips Petroleum Corporation in which they state that Wilson and the Sisters are still claiming interest.

B. Separate Answer of James E. Grigsby.

C. Motion for Production of Document.

D. Notice to take Deposition on Oral Examination.

I have been out of the city for the past few days and on my return, I found these papers: Notice to produce documents and contract, and Notice to take your deposition. According to the certificate he mailed your copy, which you probably have by now. Under the federal rules you are required to be present in person for the taking of the deposition on the date set out in the notice or, have it continued.

Since we are not informed as to your recent conversations with Mr. James E. Grigsby, relative to his employment, and in as much as he has filed an answer and counterclaim without our consent or approval, and which we do not believe is a proper part of this case, and since you think there is a question about the attorneys' fee due, it is our suggestion that you engage counsel to represent you in the question of Grigsby's Cross Petition about his fee matter, only, and we will

continue to represent you and do our best to bring this original litigation to a conclusion.

Due to the urgency of this matter, we are sending a copy to Mr. Kenneth Coulter, Court House, Little Rock, Arkansas; and we suggest that you advise us immediately as to your decision in this matter.

Yours truly,

CONNER, HILPIRT & BRITTON
By LESLIE L. CONNER

LLC:djh
Enc.

P.S. Under separate copy we are sending you a copy of the Answer Brief in the Sisters' and Wilson's Petition for Certiorari in the Supreme Court of the United States."

43.

This plaintiff further shows to this Honorable Court that after he signed the letter prepared by Leslie L. Conner under the circumstances hereinabove set out on the 25th day of September, 1952, that he advised the said defendant that he would not proceed under said letter, and that the same was unfair, unjust and was not binding upon him and that he would only pay Leslie L. Conner, a reasonable fee and that was the only condition under which he would proceed with said litigation and that the said Leslie L. Conner, in the presence of Arnold Britton, James E. Grigsby and Phil E. Daugherty, tried to get the said plaintiff herein to sign a deed for one-half of the farm of this plaintiff, or 80 acres, and this plaintiff told all of said parties in the private office of Leslie L. Conner that he would not pay 50% or give up half of his farm under any conditions whatsoever, and that said lawyers then attempted to get him to sign said deed, and he steadfastly refused and told all the

lawyers he was not bound by a 50% agreement, and that if they did not want to proceed on reasonable fee terms, he would quit and would not under any conditions pay 50% or one-half of his property, but would only pay a reasonable fee and that finally, after the said Simler and the parties had remained in the office for approximately an hour or more, Mr. Phil E. Daugherty stated "Simler definitely isn't going to sign this and there is no use to talk with him further about it."

44.

This plaintiff shows now that the said Phil E. Daugherty made the said statement quoted in Paragraph 43 above at least twice, and finally, after more than one hour of haranguing this plaintiff, said meeting was adjourned, and this plaintiff now shows that after the said Leslie L. Conner knew of said matter and proceeded to represent the plaintiff thereafter that he then became estopped to claim or assert anything other than the reasonable lawyer fee, and that was the basis upon which he was employed to begin with and the basis upon which he represented Mr. Simler during the litigation.

45.

This plaintiff shows that Kenneth Coulter mentioned in the letter quoted below, was the son-in-law of the said A. J. Simler, plaintiff in this cause, and was Court Reporter at Little Rock, Arkansas in the Chancellor Court, but that the said Kenneth Coulter is now deceased, but that during his lifetime, he advised Mr. Conner that Mr. Simler would not and should not pay anything other than a reasonable fee and that if the said defendant wanted anything more than a reasonable fee, that he should not proceed further as attorney for the plaintiff herein. Mr. Coulter's letter above mentioned is quoted below as follows, as written by the said defendant, Leslie L. Conner:

October 24, 1955

"Mr. Kenneth Coulter
Court House
Little Rock, Arkansas

Dear Mr. Coulter:

Your letter of October 21 is acknowledged and you are advised that Mr. James E. Grigsby has not been fired from our staff.

We agree that the constant threat of litigation is most annoying, and if you and Mr. Simler think that an advancement to Mr. Grigsby, without prejudice to anyone's rights would be advisable, we would cooperate.

We are sorry to learn of Mrs. Simler's illness and trust that she is improved. Please advise us.

Yours very truly,

(Signed)
LESLIE L. CONNER

LLC ab
cc A. J. Simler"

46

This plaintiff further shows that, finally, his patience was exhausted on account of all the litigation and lawsuit and harassment and that he discharged the defendant by written letter, and that after said time, the parties agreed that the said Conner could continue without any prejudice to his rights or the rights of this plaintiff in connection with the settlement of the lawyer fee, and that he was permitted to continue at the suggestion of John B. Ogden, attorney for the plaintiff herein, and it was distinctly agreed and understood that it should be without any prejudice to the rights of the defendant or of the plaintiff with reference to a lawyer fee in this cause.

47.

This plaintiff now shows, however, that at all times shortly after the letter of September 25, 1952 was written, the said Conner knew that the said plaintiff in this cause would not agree to anything other than a reasonable fee and refused to recognize the letter of September 25, 1952.

48.

This plaintiff further shows that he wrote a letter on the 16th day of December, 1955 to the said Leslie L. Conner, and sent the same by registered mail and that the said Conner received the same, which letter is in words and figures as follows, to-wit:

"Oklahoma City, Oklahoma
December 16, 1955

Mr. Leslie L. Conner
Attorney at Law
Hightower Building
Oklahoma City, Oklahoma

Dear Sir:

Affirming our telephone conversation of this A.M. in which you definitely refused to commit yourself as to the amount of attorney's fees you would accept as my counsel, and further, because of dissension among your force, I believe it impossible for you or your force to serve my best interest, and I am compelled, (much as I regret it), to dispense with your services, as of this date.

Yours truly,

(Signed): A. J. SIMLER"

49.

This plaintiffs shows to this Honorable Court that the said Grigsby and Conner became either quarrelsome with

each other or disagreed for some cause, and each one would call or write the plaintiff, criticizing the other, and would either come or send people to Little Rock in an effort to gain an advantage over the other.

50.

This plaintiff shows that the defendant suggested that the said plaintiff employ counsel to represent him and this plaintiff shows that he wrote Leslie L. Conner on September 29, 1955, and advised him specifically as to previous statements and conduct of the said Leslie L. Conner, which letter is in words and figures as follows:

No. Little Rock, Arkansas
September 29, 1955

Mr. Leslie Conner,
414 Hightower Building,
Oklahoma City, Oklahoma

Dear Sir:

Yours of 9/19 to hand, and in reply will say as to your understanding of my statement of Dec. 10, 1954, when four or five of you attys. tried to high pressure me into signing a deed to 80 acres of the farm, and my refusal, you will recall that upon a question from Mr. Grigsby as what I intended to do, I replied that the only contract I recognized was the one containing the proposition that you yourself, Mr. Conner, made to represent us in this case. That one was for a reasonable fee & if we could not agree as to a reasonable fee we would let the Co. Court or any other court decide a reasonable fee. As to your hiring other lawyers, that was your own proposition. It is no fault of mine that you were not big enough to handle this case. As you must recall, I, thru Mr. Coulter, attempted to get you to discuss this proposition about August 30th, 1954 and

you flew into a rage, stating that when the case was finally settled was time enough to talk fees. So your statement that you did not know of my dissatisfaction as to your claim of fifty per cent was grossly in error.

Furthermore, I now direct, as I have told you before, not to file any more law suits against Phillips Petroleum Company or anybody else without specific instructions from me.

Again assuring you of my willingness to be more than fair in this matter, I am

Yours very truly,

(signed) A. J. SIMLER
Route 3, Box 334
No. Little Rock, Ark."

51.

On August 31, 1955, the plaintiff wrote the defendant a letter which was received by the defendant, and which is in words and figures as follows, to-wit:

"North Little Rock, Arkansas
August 31, 1955
Mr. Leslie L. Conner,
414 Hightower Building
Oklahoma City, Oklahoma

Dear Mr. Conner:

I am in receipt of your letter of August 25 inclosing checks which is figured upon a fifty per cent fee to you. You urged me to make such an agreement on December 10th last, and to sign a quitclaim deed to that effect, which proposition I refused. You are advised that my proposition remains as it has always been; I will not convey to you, as a part of your fee, any part of this realty. The contract of July 18, 1952 provides for a reasonable fee, and if we are unable to agree

upon what constitutes a reasonable fee, I am willing to leave it to the Court, as per said contract. The proposition was made by you, accepted by me, and your proposition now comes as a surprise. Please remember that, at considerable expense to us, we lost completely in the Oklahoma state courts.

I am considering submitting this matter to an unbiased and unprejudiced attorney. In that connection I would like to have the following:

1. Copy of motion of Phillips Petroleum Company to pay over the money in their hands;
2. Order upon such motion;
3. Photostatic copy of contract of July 18, 1952;
4. Photostatic copy of contract of September 25, 1952;
5. Photostatic copy of other contracts, if any, relating to fee

You will recall that I executed a will, which I believe was in the latter part of September, 1952, which I left in your safekeeping. Please send this to me.

Very truly yours,
(Signed) A. J. Simler"

52.

This plaintiff further shows to this Honorable Court that he received a letter from the defendant in regard to the case of *Britton* v. *Simler*, wherein Mr. Britton had sued Mr. Simler, claiming a large lawyer fee against him, and that Mr. Simler was forced to and did employ counsel to represent him in said cause, and the defendant, Leslie L. Conner, did not represent him therein but did make a suggestion in the matter and said letter referring to said

cause from the defendant Leslie L. Conner is in words and figures as follows, to-wit:

"November 9, 1956

Mr. Phil E. Daugherty
Lawyer,
First National Building
Oklahoma City, Oklahoma

Mr. John B. Ogden
Lawyer
Liberty Bank Bldg.,
Oklahoma City, Oklahoma

Gentlemen: Re: Britton v. Simler

We learned today that this case is set on the pre-trial docket before Judge W. R. Wallace on November 16, 1956.

We enclose the original letter from Britton to Simler which Mr. Ogden sent us after Mr. Simler mailed it to him.

When I talked to Britton about this and before the suit was filed he told me that Mr. Simler had agreed to pay him a fee and employed him when he went to Arkansas to see Mr. Simler last year.

However, in this letter he says Mr. Simler employed him in January 12, 1956 and in the *rth* paragraph of the letter he says Mr. Simler agreed that a substantial fee had been earned when he visited Mr. Simler in his home in Arkansas.

In the complaint he alleges that he was employed on July 18, 1952 and performed legal services to March, 1956 when he without notice left me and that in May, 1956 that Simler discharged him.

It seems that either deposition should be taken or interrogatories should be served to definitely get his claim. However, this is merely a suggestion to you.

Yours truly,

(Signed): LESLIE L. CONNER"

53.

This plaintiff further shows to this Honorable Court with reference to the litigation in the United States Circuit Court of Appeals, Tenth Circuit, reported in 210 F, 2d, beginning at Page 99, that in the trial court, namely the United States District Court of the Western District of Oklahoma at Oklahoma City, Oklahoma, there was no evidence offered. The matter was disposed of by motion and ruling of the court, and not one witness on either side was produced or testified. That it was not a trial that even required the listening to one witness on either side, but was merely a simple question of law plainly written in the Constitution and Statutes of the State of Oklahoma, and that the said Leslie L. Conner did not even appear in Denver in the United States Court of Appeals and argue said matter, but that James E. Grigsby argued said matter in the Court of Appeals in Denver, and that the plaintiff herein paid his expenses for going to Denver to argue said matter, and that on September 11, 1953, the said defendant, Leslie L. Conner, wrote plaintiff with reference thereto, which letter is in words and figures as follows:

September 11, 1953

Mr. A. J. Simler
Rural Route #3
Box 334
North Little Rock, Arkansas

Dear Mr. Simler:—

Enclosed find speech which James E. Grigsby made before the Circuit Court of Appeals at Denver on

Thursday, September 10, 1953. I received a call from Mr. Grigsby last night from Denver, and he said the speech and argument was very well received by the Court. We should have an opinion from the Court in this case within the next 60 days.

We will keep you advised.

Yours truly,

(Signed) 'Leslie L. Conner R'
CONNER, HILPIRT & BRITTON'

54.

This plaintiff most respectfully shows that Conner, Hilpirt and Britton used the name of "Conner, Hilpirt and Britton" on its letterheads and also had the names on the letterheads of Leslie L. Conner, Charles W. Conner, A. L. Hilpirt, and Arnold B. Britton, leading this plaintiff to believe that the firm was representing him, but the plaintiff has learned since that Mr. Hilpirt was deceased for the greater part of the time, and although the letters were signed, as indicated above, "Conner, Hilpirt & Britton," the said Hilpirt was deceased and the plaintiff has been informed and verily believes, having received his information from Leslie L. Conner, that Mr. Britton was not even a member of the firm, and that such conduct on the part of the defendant misled the plaintiff herein.

55.

This plaintiff now shows to this Honorable Court that many of the suits filed by the firm mentioned in paragraph 54 herein were unnecessary, and only created expense which this plaintiff was forced to pay, and which suits were eventually lost, and that this plaintiff paid all expenses in the Supreme Court of the State of Oklahoma on the will contest, which was lost, and that actually, the only case that was won was the case of *"Sinder v. Wilson,"* reported

in 219 F. 2d, Page 99, *supra*, and in the Supreme Court of Oklahoma, on the question of costs and attorneys fees, the Supreme Court held, in effect, that the plaintiff in this cause should not be required to pay the bequest under the terms of the will of the late Birdine Fletcher, his sister, which bequest had already been paid and that under the terms of the will, it was construed that she intended that the bequest be paid out of her personal property, money and bonds on hand, but the said plaintiff was required to pay all the attorney's fees, costs of administration and taxes, which amounted to more than $100,000.00.

WHEREFORE, having fully answered herein and replied to the Counterclaim, this plaintiff prays that the prayer of the Counterclaim and the Counterclaim of the defendant, Leslie L. Conner, be denied and this Court fix a reasonable attorney's fee for the defendant herein and determine what is a reasonable fee under the circumstances and under the evidence, and that plaintiff have his costs herein expended, for such other relief as may appear proper, whether legal or equitable, general or specific, to which the evidence may show him entitled.

JOHN B. OGDEN
1408-1411 Liberty Bank Building
Oklahoma City, Oklahoma
Attorney for Plaintiff

Certificate

This is to certify that a true and correct carbon copy of the within and foregoing Reply to Counterclaim of Defendant was mailed this the ____ day of May, 1959 to Messrs. Robert O. Bailey and Leslie L. Conner, Hightower Building, Oklahoma City, Oklahoma.

JOHN B. OGDEN

[APPENDIX]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF THE STATE OF OKLAHOMA

A. J. Simler, Plaintiff, v. Leslie L. Conner, Defendant. No. 8008 Civil

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REQUEST FOR JURY TRIAL

Comes now the above named plaintiff, A. J. Simler, and shows to the Court that he has heretofore requested a jury trial in this cause and that he now again requests that this cause be submitted to a jury to determine the facts herein and hereby specifically requests a jury trial in this cause.

Dated this the 14th day of May, 1959.

A. J. SIMLER, Plaintiff
By JOHN B. OGDEN
1408-1411 Liberty Bank Bldg.
Oklahoma City, Oklahoma
Attorney for Plaintiff

This is to certify that a true copy of the above and foregoing Request for Jury Trial was mailed to Messrs. Robert O. Bailey and Leslie L. Conner, Hightower Building, Oklahoma City, Oklahoma.

JOHN B. OGDEN